Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1921

TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND,

Petitioner,

v.

WASHINGTON NATIONAL ARENA LIMITED PARTNERSHIP, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

ROBERT BINGHAM OSTROM
County Attorney

MICHAEL OWEN CONNAUGHTON
Deputy County Attorney

DAVID SAMUEL BLIDEN
Associate County Attorney

Attorneys for Petitioner
5104 County Administration Building
Upper Marlboro, Maryland 20870
(301) 952-4347

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No.

TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND,

Petitioner,

v.

WASHINGTON NATIONAL ARENA LIMITED PARTNERSHIP, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The Petitioner, Treasurer, Prince George's County, Maryland, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland in the case of *Washington National Arena Limited Partnership, et al. v. Treasurer, Prince George's County, Maryland.* The Mandate in the case issued on March 10, 1978. That action rendered the Opinion of the Court of Appeals of Maryland a final judgment.

OPINION

The Court of Appeals of Maryland issued its Opinion on February 7, 1980. The Petitioner filed a motion for reconsideration on March 6, 1980. This motion was denied on March 7, 1980. The Mandate of the Court of Appeals of Maryland, which rendered its Opinion a final judgment, issued on March 10, 1980. This Petition has been filed within 90 days of that date. This Court has jurisdiction to review the Court of Appeals of Maryland's decision pursuant to 28 USC, § 1257 (3).

QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution would prohibit the State of Maryland from retroactively validating a tax rate previously established by a county government for recording of instruments which had been determined to be in excess of that permitted by State law?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent portions of the following are printed in the Appendix:

Constitution of the United States, Amendment XIV, Section I;
Constitution of Maryland, Declaration of Rights, Article 24;
Chapter 301 of the Laws of Maryland, 1968;
Chapter 452 of the Laws of Maryland, 1968;
Chapter 129 of the Laws of Maryland, 1976;
Article 81, Section 217, Annotated Code of Maryland;

Article 81, Section 277, Annotated Code of Maryland; and

General Resolution No. 32 of the Board of County Commissioners of Prince George's County, Adopted September 13, 1968.

STATEMENT OF THE CASE

Maryland authorizes its counties to tax the recordation of instruments filed in the land records of the various counties. The individual counties can establish various tax rates pursuant to authority delegated by the State. Article 81, § 277, Subsections (m) through (w), Annotated Code of Maryland. In 1968, Prince George's County, Maryland, (hereinafter referred to as the "County") relying on an amendment to a State enabling act, raised the County's recordation tax rate from $1.10 to $1.65 per $500 of consideration or secured debt. Chapter 452, Laws of Maryland, 1968, amending Article 81, § 277(q), Annotated Code of Maryland; and General Resolution No. 32, Board of County Commissioners of Prince George's County, adopted September 13, 1968. In 1975, The Court of Appeals of Maryland ruled that the County had misinterpreted the amendment and thus did not have the authority to raise the rate from $1.10 to $1.65 per $500. *Prince George's County v. White,* 275 Md. 214, 340 A.2d 236 (1974). The Respondents, relying on that decision, made application for a partial refund of taxes paid at the higher rate, i.e., $1.65 rather than $1.10. Thereafter, the Maryland Legislature passed curative legislation, which, in pertinent part, ratified the Petitioner's taxation at the higher rate. Chapter 129, Laws of Maryland, 1976. Relying on this legislation, the County denied the Respondents' requests for refunds. The Respondents, following the administrative remedies available to them, appealed to the Maryland Tax Court. Article 81, § 277, Annotated Code

of Maryland. They argued there that the curative legislation was unconstitutional as it violated the due process rights secured by the Fourteenth Amendment to the United States Constitution. (A. 1 - 11) The Maryland Tax Court rejected this argument and authorized the denial of the requested refunds. (A. 12 - 17) This decision was affirmed by the Circuit Court for Prince George's County, Maryland. (A. 18 - 23) The Respondents appealed to the Court of Special Appeals of Maryland and shortly thereafter requested the Court of Appeals of Maryland to issue a writ of certiorari to the Court of Special Appeals to review the Circuit Court's decision. This request was granted and the Court of Appeals of Maryland ruled that the Circuit Court's decision was erroneous as the curative legislation would impair property rights in violation of the United States Constitution and the State Declaration of Rights. (A. 32 - 45)[1]

REASON FOR GRANTING THIS WRIT

The frequent discussion of curative acts in appellate decisions, legal treaties, and law reviews indicates their wide use throughout the United States. *See,* 140 A.L.R. 967; The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harv. L. Rev. 692 (1960). In various instances such acts have been attacked typically upon allegations that they violate affected individuals' Fourteenth Amendment rights to due process. This was the prime thrust of the Respondents' attack on the

[1]The provision of the State Declaration of Rights which models the Fourteenth Amendment is given the same interpretation as the Fourteenth Amendment to the United States Constitution. *Constitution of Maryland,* Declaration of Rights, Article 24; *Rafferty v. Comptroller,* 228 Md. 153, 178 A.2d 896 (1962); *Bowie Inn, Inc. v. City of Bowie,* 274 Md. 230, 335 A.2d 679 (1965).

Maryland curative act at issue. That act validated a tax rate which had been previously declared higher than that authorized by State law. The Court of Appeals of Maryland (hereinafter referred to as the "Maryland Court") in voiding the act established a constitutional standard without precedent. That standard conflicts with the constitutional standard established by various decisions of this Court.

It is desirable that this Court review this decision for if permitted to stand it will infringe on the ability of the State of Maryland and its many subdivisions to address statutory problems that have been traditionally rectified through curative legislation. The precedential effect of this decision may cause similar problems in other jurisdictions. Further, review is necessary because the decision reflects confusion regarding a case of this Court, which although limited in application, apparently still retains precedential value without definitive parameters. *Forbes Pioneer Boat Line v. Board of Comm'rs.*, 258 U.S. 338 (1922).

In voiding the subject act, the Maryland Court held that a curative act is constitutionally infirm when it conflicts with a previously established legislative policy. This standard rendered Maryland's attempt to validate Prince George's County's $1.65 per $500 tax rate unconstitutional as it conflicted with previous State legislation establishing the rate at $1.10 per $500. The Maryland Court essentially held that curative acts are only effective when there is a complete void in prior authority or where the error rendering the previous action invalid is of a technical nature. Obviously, this leaves little room for the enactment of valid curative legislation.

The above-described standard was a result of what the Maryland Court apparently felt was a necessary recon-

ciliation of two previous decisions of this Court. *Forbes Pioneer Boat Line v. Board of Com'rs., supra,* and *United States v. Heinszen,* 206 U.S. 370 (1907). The result of this reconciliation was the Maryland Court's reliance on the *Forbes* case, a case striking a curative act, rather than the *Heinszen* case, a case upholding a curative act. This attempted reconciliation was unnecessary as the Maryland Court failed to rely on a case of this Court directly on point. In *Rafferty v. Smith, Bell & Co., Ltd.,* 257 U.S. 226 (1921), this Court reviewed a curative act seeking to validate the collection of certain export duties by the Philippine Government between 1916 and 1920. This tax, established by an act of the Philippine Legislature, conflicted with a federal statute specifically and unequivocably precluding such taxes. Despite this expression of legislative policy which the Maryland Court would hold as precluding curative legislation, this Court, relying on *Heinszen,* summarily affirmed the curative act. It would be difficult to find a case closer to point.

Even if the *Rafferty* case is not controlling, the reliance of the Maryland Court on the *Forbes* case is still suspect. This Court, in *Charlotte Harbor and Northern Railroad Co. v. Welles,* 260 U.S. 8 (1922)[2], precluded any application of *Forbes* ". . . beyond its facts." *Id.,* 260 U.S. at 12. *Forbes* was described as concerning,

> . . . an attempt to impose a charge for the use of a government canal, for which use, at the time availed of, there was no charge – an attempt, therefore, to turn a gratuity conferred and enjoyed into a legal obligation and subject it to a toll *Id.*

[2]*Charlotte Harbor and Northern Railroad Co. v. Welles, supra,* was decided five months after *Forbes Pioneer Boat Line v. Board of Comm'rs, supra.*

This is certainly not the case with the recordation tax in Prince George's County as that tax has been continually levied under State authority.

The only portion of the *Forbes* opinion which this Court in *Charlotte Harbor* apparently adopted as having precedential value was the broad acceptance of the principle upon which the ratification power is based, i.e., ". . . the principle may ratify and affirm the unauthorized act, and thus retroactively give it validity when rights of third persons have not intervened . . ." *United States v. Heinszen,* 206 U.S. at 382.[3] As the Maryland Legislature had the power in 1968 to grant the County the right to set the tax rate at $1.65, this principle would enable it to retroactively validate the County's levy at that rate. *See, MacLeod v. United States,* 229 U.S. 416 (1913); *Tiaco v. Forbes,* 228 U.S. 549 (1913).

More recently, the United States Court of Appeals for the Third Circuit, relying in part on the *Rafferty* case, upheld a curative act under circumstances similar to those before the Maryland Court. *HMW Industries, Inc. v. Wheatley,* 504 F.2d 146 (3rd Cir., 1974). In that case, the Court of Appeals considered a situation where the Virgin Islands had granted tax subsidies which were apparently in conflict with a Federal statute applying the United States Income Tax laws in their entirety to the Virgin Islands. The Commissioner of the Internal Revenue Service, relying on this conflict, asserted a deficiency. Thereafter, Federal legislation was passed which permitted and ratified the subsidies. The Court of Appeals, in upholding this curative legislation, noted that ". . . Congress has the

[3]Neither a prior adjudication of lack of authority nor the institution of proceedings to recover monies due pursuant to such adjudication would establish such intervening rights. *United States v. Heinszen, supra.*

power to ratify territorial legislation, even if that legislation was unauthorized when enacted." *Id.* 504 F.2d at 152. This holding, which is contrary to the decision of the Maryland Court, represents a proper application of the law as dictated by this Court.

Although patently erroneous, the Maryland Court's decision can be viewed as a reflection of its confusion with this Court's attempt to reconcile the *Forbes* case with the *Heinszen* case and its progeny. As noted previously, the *Charlotte Harbor* decision appeared to eliminate *Forbes'* precedential value. Yet, *Forbes* is subsequently cited as precedent in *Graham v. Goodcell,* 282 U.S. 409 (1931). In *Graham,* this Court dealt with a curative act designed to extend the statute of limitations for the collection of certain Federal taxes. This act was necessary as the government had mistakenly determined that the statute of limitations had been tolled. In upholding the act, this Court relied on *Heinszen* and related cases, including *Rafferty.* But, this Court also found it necessary to distinguish *Forbes* noting that *Forbes* concerned attempts to assess subsequently activities that were free when consummated.[4] Further, the rejection of *Heinszen* and *Rafferty* by this Court in *Forbes* was explained as follows:

> In *Forbes Pioneer Boat Line v. Board Of Commissioners, supra,* the *Heinszen* and *Rafferty* cases were invoked without success; the court expressed the view that "a tax may be imposed in respect of past benefits" and that in those cases the principle of ratification was not necessarily involved, citing *Wagner v. Leser,* 239 U.S. 207, 216, 217, 36 S.Ct. 66, 60 L.Ed. 230, and *Stockdale v. Atlantic Insurance Co.,* 20 Wall.

[4]This was not the case in *Graham* nor in the case at bar.

323, 22 L.Ed. 348. *Graham v. Goodcell,* 232 U.S. at 429.

This bare reiteration of a small portion of the resurrected *Forbes* opinion does not provide a standard to determine when *Forbes* rather than *Heinszen* would be applicable. This apparently resulted in the erroneous decision by the Maryland Court. It is a situation which now needs to be addressed.

CONCLUSION

Generally, when an individual errs, only that individual suffers. Yet when government errs, society suffers. This is the rationale for the broad powers that are vested in governments to cure their errors without prejudice. The decision of the Maryland court represents a marked limitation of this power. Denial of this traditional remedy could result in situations where vast amounts of tax revenues must be refunded or government actions are declared void without recourse. Thus, if permitted to stand, the decision would adversely affect the ability of Maryland governmental units to function. Therefore, a writ of certiorari should issue to the Court of Appeals of Maryland.

Respectfully submitted,

ROBERT BINGHAM OSTROM
County Attorney

MICHAEL OWEN CONNAUGHTON
Deputy County Attorney

DAVID SAMUEL BLIDEN
Associate County Attorney

Attorneys for Petitioner
5104 County Administration Building
Upper Marlboro, Maryland 20870

APPENDIX A

IN THE MARYLAND TAX COURT

ALAN I. KAY and JEROME D. KAY, as General Partners of GREENBRIAR ASSOCIATES, a Maryland limited partnership	:	
Petitioners	:	
	:	*APPEAL No. 139*
v.	:	*(1–98)*
TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND	:	
Respondent	:	
**********		
ALLEN E. ROZANSKY and ALAN I. KAY, as General Partners of CHERRY GLEN ASSOCIATES, a Maryland limited partnership	:	
Petitioners	:	
	:	*APPEAL No. 140*
v.	:	*(1–229)*
TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND	:	
Respondent	:	
**********		

PETITIONERS' MEMORANDUM OF LAW

Alan I. Kay and Jerome D. Kay, General Partners of Greenbriar Associates, a Maryland Limited Partnership and Allen E. Rozansky and Alan I. Kay, General Partners of Cherry Glen Associates, a Maryland Limited Partner-

ship, Petitioners, by their attorneys George A. Brugger, John J. Sellinger and Fossett & Brugger, file this Memorandum of Law in support of their appeals to the Maryland Tax Court.

STATEMENT OF THE CASE

Petitioners filed these appeals pursuant to the provisions of Section 217, of Article 81 of the Annotated Code of Maryland (1975 Replacement Volume) on the grounds that the failure by the Respondent either to allow or disallow Petitioners' claims for partial refunds of recordation taxes paid to the Respondent within six months of the filing of said claims constituted a denial of said claims and an appeal to this Court was proper.

Article 81, Section 215 of the Code of Maryland authorizes the filing of a claim for a refund "whenever any person shall have erroneously or mistakenly paid to any State, county or municipal Agency authorized to collect the same more money for special taxes or other fees or charges than was properly and legally payable. . .". On December 31, 1975, Petitioners filed claims for partial refunds of recordation taxes paid by them pursuant to the requirements of Resolution Number 32 adopted by the County Commissioners of Prince George's County on September 13, 1968.

The instant appeals were filed on July 29, 1976, when the Respondent failed to render a decision on Petitioners' claims within six months of the filing of the claims. Pursuant to the provisions of Article 81, Section 217 Petitioners deemed their claims for refunds to have been "finally disallowed" and have appealed this denial.

Oral argument on these appeals was heard by this Court on December 1, 1976, and Petitioners were granted leave

to file this Memorandum in response to the Memorandum filed by the Respondent.

* * *

II. The Enactment of Chapter 129 of the Laws of 1976 by the Maryland legislature does not overrule or invalidate the decision in *Prince George's County, Maryland v. White.*

In Prince George's County, Maryland v. White the Court of Appeals construed the various provisions of Article 81, Section 277 and determined the legislative intent in enacting subsection (q) and (r). Eight years later the Maryland legislature has, in Chapter 129, attempted to rewrite the legislative history of subsection (q) of Section 277.

As stated by the Court of Appeals in *Blumenthal v. Clerk of Circuit Court of Anne Arundel County:*

> Chapter 129 and Chapter 142, a companion measure, were enacted as emergency legislation in obvious response to our recent decision in *Prince George's Co. v. White,* 275 Md. 314, 340 A.2d 236 (1975). In a word, they appear designed to establish once and for all that (q) applies literally to the City of Baltimore and the 23 counties and to ratify and confirm *retroactively* the recordation rate fixed by any local resolution or ordinance of Baltimore City or the 23 counties becoming effective on or after July 1, 1968, notwithstanding a different rate specified for such political subdivision in any subsection of § 277. 278 Md. 398, at 406.

Although the Court of Appeals in *Blumenthal* acknowledged the intended effect of the enactment of Chapter 129, it did not address the actual effect of the enactment. The issues thus remain whether the legislature intended the enactment of Chapter 129 to invalidate future claims for refunds in Prince George's County and, if so, whether the intended effect was accomplished.

The decision of the Court of Appeals in *Prince George's County, Maryland v. White* is a judicial determination that Resolution Number 32 was illegally enacted by the County Commissioners in Prince George's County and that taxpayers who were illegally required to pay the recordation tax at the rate of $1.65 were entitled to a partial refund.

If, as Respondent argues, the enactment of Chapter 129 validates retroactively the collection of the recordation tax in Prince George's County at a rate already found to be illegally established, then this enactment plainly constitutes an attempt by the Maryland legislature to reverse the judgment of the Court in *White* and is "a plain assumption of judicial power by the legislature . . . and, as such, this law must be pronounced inoperative and void." *Baltimore v. Horn,* 26 Md. 194, 206 (1860).

Furthermore, if Chapter 129 is an attempt by the legislature to ratify the already-determined-to-be-illegal action of the County Commissioners in adopting Resolution Number 32, that attempted ratification is equally invalid. The doctrine of ratification is not without limitations. See, *Comptroller v. Glenn L. Mavin Co.,* 216 Md. 235, 140 A.2d 288 (1957). In that case the Court of Appeals relied upon the reasoning of the Supreme Court in *Forbes Pioneer Boat Line v. Board of Commissioners,* 258 U.S. 338 wherein Mr. Justice Holmes stated that ". . .

generally ratification of an act is not good if attempted at a time when the ratifying authority could not lawfully do the act." 216 Md. 235, at 249. Clearly the Maryland legislature could not in April 1976 raise the recordation tax rate for the years subsequent to the adoption of Resolution Number 32 to $1.65 if that rate had been properly established at $1.10.

To say the least, Chapter 129 is a curious statute. It appears to be a statement of legislative intent stated in the form of a statute. Regardless of the presumed intention of the legislature, Chapter 129 cannot be validly applied retrospectively to invalidate the entitlement of Petitioners or any other persons illegally required to pay the recordation tax at the rate set by Resolution Number 32 to a partial refund. A retrospective application of Chapter 129 after the judicial determination of the invalidity of Resolution Number 32 offends constitutional limitations and restrictions:

> A statute, even if the legislature so intended will not be applied retrospectively to divest or adversely affect vested rights, to impair the obligation of contracts, or so as to violate the due process clause, or to operate as a bill of attainder or an *ex post facto* law. *Janda v. General Motors Corp.*, 237 Md. 161, 169, 205 A.2d 228 (1964).

Retrospective application of Chapter 129 to divest the taxpayers of Prince George's County of their right to a partial refund would be in contravention of the due process clause of the Fourteenth Amendment to the United States Constitution and would be in conflict with Article 23 of the Maryland Declaration of Rights.

* * *

CONCLUSION

For the reasons stated herein, the Petitioners respectfully submit that in accordance with the decision in *Prince George's County v. White* they are entitled to the payment of a partial refund of the recordation taxes which they paid to record the deeds to the properties which are the subject of this appeal. Petitioners submit that the action of the Maryland legislature in enacting Chapter 129 did not divest Petitioners of their right to a refund under the decision in *White* and submit that the Respondent is collaterally estopped from relitigating in this appeals the same issues decided in *White.*

Petitioners request that the denial by operation of law of their requests for partial refunds be reversed and that the Respondent be ordered to make immediate payment of the amounts illegally charged by the Respondent pursuant to Resolution Number 32.

Respectfully submitted,

FOSSETT & BRUGGER

By: /s/ George A. Brugger
George A. Brugger

/s/ John J. Sellinger
John J. Sellinger

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of January, 1977, a copy of the foregoing Petitioners' Memorandum of Law was mailed, postage prepaid, to James C. Chapin, Esquire, Ellis J. Koch, Esquire, Richard Alper, Esquire and Karel C. Petraitis, Esquire, Attorneys for Respondent, Court House, Upper Marlboro, Maryland 20870.

/s/ John J. Sellinger
John J. Sellinger

APPENDIX B

BEFORE THE MARYLAND TAX COURT

NORTHAMPTON CORPORATION	:	
Plaintiff	:	
and	:	
	:	
WASHINGTON NATIONAL ARENA LIMITED PARTNERSHIP	:	
Plaintiff	:	
and	:	
	:	
ROSECROFT TROTTING AND PACING ASSSOCIATION	:	
Plaintiff	:	
- vs -	:	Misc. Appeals
	:	Nos. 108
PRINCE GEORGE'S COUNTY, MARYLAND	:	through 115
	:	118 through
Defendant	:	120 and 125

SUPPLEMENTAL MEMORANDUM

Prince George's County, Maryland, has recently filed with this Court a Supplemental Memorandum of Law regarding its contentions that the Plaintiffs herein are not entitled to a refund of taxes declared by this Court and the Court of Appeals of Maryland to have been illegally assessed. The Maryland Legislature included in the Emergency Senate Bill 512 language which attempts to retroactively declare the intent of the Legislature with regard to whether Subsection (q) or (r) of Article 81, Section 277 was in effect in Prince George's County, Maryland, from 1968 until the passage of the above mentioned Senate Bill. The County now argues that this Bill should be applied retroactively while the *Prince George's County v. White* case should only be applied prospectively. The inconsistency of such argument is readily apparent.

In the case before this Court, the Plaintiffs have two theories of recovery: 1) That this Court and the Court of Appeals interpreted the subsections involved herein in the *White* case and determined legally that Subsection (r) was applicable in Prince George's County, Maryland; and 2) that even without the *White* case (supra), these Petitioners have every right to claim pursuant to the same arguments made in the *White* case (supra). This Court and the Court of Appeals of Maryland investigated and listened to argument by able counsel regarding the interpretations of such subsections as well as the *intent* of the Legislature. The legislative intent (or lack thereof) did not mandate that Subsection (q) be applied in Prince George's County, Maryland, and this Court and the Court of Appeals both held that Subsection (r) applied from 1968 until the time of the *White* case (supra) in Prince George's County. Both this Court and the Court of Appeals decided the *White* case (supra) on the language of the statute as they had to. The language of a statute has been held to be the precise expression of legislative intent. (See *Shell Oil Co. v. Brownley,* 181 Md. 8, 26 A.2d 764 [1942]).If there was or is any doubt as to the meaning of such subsections, the Courts have uniformly held that a statute must be construed strongly in favor of the citizen and against the State. (See *Comptroller of the Treasury v. M.E. Rockshill, Inc.,* 205 Md. 226, 107 A.2d 93 [1954] and *Fair Lanes, Inc. v. Comptroller of the Treasury,* 239 Md. 157, 210 A.2d 821 [1965].)

The County here argues that a totally different Legislature, eight years after the passage of an Act, should be able to retrospectively declare the Legislature's intent at the time of passage. Such argument cannot and should not be taken seriously. If such action was possible, no one could rely on any statute and courts would not be necessary to determine the meaning of any statute. It

would allow the Legislature the power to retroactively overrule the courts of this land which would be in violation of both the Maryland and the United States Constitution.

Further, to accept the County's argument regarding the new Senate bill would seriously impair the rights of Petitioners herein which accrued and have been litigated. The Court of Appeals in *Janda v. General Motors Corporation,* 237 Md. 161, 205 A.2d 228 (1964), stated that a statute would not be applied retroactively, even if the Legislature so intended, to divest or adversely affect vested rights, impair obligations of contract, or violate due process or operate as a bill of attainder or ex post facto law. If such applies to a statute seeking retroactive application, it must also apply to expressions of legislative intent seeking retroactive effect. The Petitioners herein have a statutory right to seek a refund of these erroneously and illegally imposed taxes. Petitioners are following the prescribed course of action to recover such illegal taxes. To interpret the new Senate Bill as the County would have it, would be to destroy the purpose of the refund statutes and fly in the face of the legislative intent that where the government makes a mistake, they must refund such mistake.

Respectfully submitted,

SHIPLEY, O'MALLEY & MILES

By: /s/ Robert A. Manzi
Robert A. Manzi

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 1976, a copy of the aforegoing Supplemental Memorandum was mailed, postage prepaid, to Karel C. Petraitis, Associate County Attorney, Prince George's County, Office of Law, Courthouse, Upper Marlboro, Maryland 20870.

/s/ Robert A. Manzi
Robert A. Manzi

APPENDIX C

IN THE MARYLAND COURT

NORTHAMPTON CORPORATION	*	Miscellaneous Case Nos. 108 through 115
and	*	
WASHINGTON NATIONAL AREA LIMITED PARTNERSHIP	*	
and	*	118, 119, 120
ROSECROFT TROTTING & PACING ASSOCIATION, INC.	*	125
and	*	
GREENBRIAR ASSOCIATES	*	139 (1- 98)
and	*	
CHERRY GLEN ASSOCIATES	*	140 (1-299)
vs.	*	
TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND	*	

MEMORANDUM OF GROUNDS FOR DECISION

These appeals, consolidated for the purpose of this opinion, result from a disallowance of claims for partial refund of recordation taxes paid by the Petitioners to the Clerk of the Circuit Court for Prince George's County.

The issue before us is whether Chapter 129 of the Laws of Maryland 1976, may be retroactively applied to ratify and confirm the recordation rate of tax fixed by Prince George's County. Chapter 129 provides in pertinent part as follows:

> "That the legislative intent with respect to subsection (q) of Section 277 of Article 81 of the Annotated Code of Maryland is that recordation tax rates fixed from time to time by resolution or ordinance of a county or Baltimore City and which are applicable on or after the date subsection (q)

> became effective, namely, July 1, 1968, supersede tax rates specified for that political subdivision in any other subsection of Section 277 as of July 1, 1968, or subsequent applicable date of the locally enacted tax rates." (Section 1)
>
> "That authority to collect recordation taxes pursuant to a tax rate fixed from time to time by resolution or ordinance of a county or Baltimore City and applying on or after July 1, 1968, is hereby ratified, confirmed and validated."
>
> "This section 2 of the Act is not intended to apply to relevant actions which are res judicata, nor whenever constitutionally protected rights would be impaired."

As Judge Levin points out in footnote number four of the Court of Appeals' decision in *Blumenthal vs. Clerk of the Circuit Court for Anne Arundel County, et al,* 278 Md. 398 (1976), Chapter 129 was enacted in response to the Court's decision in *Prince George's County vs. White,* 275 Md. 314 (1975).

In *White, supra,* this Court and then the Court of Appeals, were confronted with an apparent conflict between subsections (q) and (r) of Section 277. Subsection (q) authorized every County and the City of Baltimore to fix the rate of recordation tax to be applied in that County or City. Subsection (r) provided:

> "*Notwithstanding the other provisions of this section* the County Commissioners of Prince George's County in lieu of the rate of tax provided in subsection (b) above, are authorized by resolution to adopt a rate of tax as follows: In the case of instruments conveying title to property, the tax shall be at the rate of $1.10 for each

> $500.00 or fractional part thereof of the actual consideration paid or to be paid; and in the case of instruments securing a debt, the tax shall be at the rate of $1.10 for each $500.00 of the principal amount of the debt secured . . . ." (Underlining supplied.)

At page 407 in *Blumenthal, supra,* Judge Levin explains the facts and decision in *White, supra,* as follows:

> "Subsequent to the enactment of Chapters 301 and 452 at the 1968 session, the County Commissioners for Prince George's County adopted a resolution pursuant to (r) setting the tax rate at $1.10, but then, acting under the authority of (q), replaced it with a second resolution fixing the rate at $1.65. In the face of conflicting claims regarding the interplay between (q) and (r), we said in White that those subsections could be harmonized so as to render (r) neither superfluous nor repealed by implication. We found additional support for this result in the Legislature's express anticipation of Chapter 452 in Chapter 301, evidenced not only by the provision that (r) should obviously follow (q), but also by the opening words of (r), 'Notwithstanding the other provisions of this section. . . .' We held, accordingly, that (r), not (q), was controlling in Prince George's County."

We find that Chapter 129 is a Curative Act, and have no difficulty in affirming the Legislature's right to retroactively clarify and correct any omission, conflict or ambiguity in Section 277. In *National Can Corporation vs State Tax Commission,* 220 Md. 418 (1959), the Court of Appeals cited with approval the following language taken

from the case *Chicago, R.I. & P. Ry. Co. vs. Streepy,* 211 Iowa 1334, 236 N.W. 24:

> "As was said in the Streepy case: 'As to the contention that the Legislature had no power to pass a retroactive legalizing act, the law is that, if the Legislature possessed the power in the first place to authorize the levy and collection of the taxes in question, then it had the power, by retrospective act, to cure any defect which may have obtained in the assessment and collection of such a tax.' " (At page 440)

At common law, no cause of action existed whereby a taxpayer could recover State taxes which had been voluntarily paid. *Baltimore vs. Hussey,* 67 Md. 112 (1887); *Mayor and City Council of Baltimore vs. Lefferman,* 4 Gill 425 (1846). This rule has been applied to preclude the recovery of taxes even where their imposition had been unconstitutional. *Red Star Line vs. Baughman,* 153 Md. 607 (1927).

In derogation of this common law principal, the Legislature has enacted various statutes which allow taxpayers in certain limited circumstances to obtain refunds of taxes voluntarily paid. Amont these statutes, are Sections 213, 214 and 215 of Article 81.

The Petitioners have brought their appeals to this Court pursuant to Section 215 which provides as follows:

> "§215. Special taxes – Claim for refund.
>
> Whenever any person shall have erroneously or mistakenly paid to any State, county or municipal agency authorized to collect the same more money for special taxes or other fees or

charges, then was properly and legally payable, or shall have paid any special taxes which were erroneously or illegally assessed or collected, or penalties or interest thereon collected without authority, or in any other manner wrongfully collected, he may file with such agency a written claim for the refund thereof. Such agency shall investigate the merits of such claim, and the taxpayer filing the same shall be entitled to a hearing thereon before such agency. Such claim for refund shall be in such form verified in such manner, contain such information and be supported by such documents as may be prescribed by the Comptroller, or the chief fiscal officer of the county or municipality, as the case may be, and shall be filed within three years from the date of the payment of the special taxes, fees charges, penalties or interest for which refund is requested."

The application of this statute is limited to those persons who have erroneously or mistakenly paid more money for special taxes then was properly or legally payable. The enactment of Chapter 129 has resurrected the resolution adopted by the County Commissioners of Prince George's County fixing the recordation tax rate at $1.65 per $500.00. This legislative action has retroactively removed the Petitioners of these appeals from that class of persons who had "erroneously or mistakenly" paid more money for special taxes then was properly or legally payable as determined by the Court of Appeals in *White, supra.* Chapter 129 denies the application of Section 215, and for the purposes of these appeals, operates to reinstate the Common Law rule.

All refunds of taxes are matters of grace with the Legislature, *Wasena Housing Corp. vs. Levay,* 188 Md.

383 (1946), and that body clearly has the authority to repeal any remedies it has enacted concerning the refund of taxes. It is our opinion that there are no vested rights in the refund of taxes, and that the application of Chapter 129 in these cases, impairs no constitutionally protected rights.

Accordingly, we shall pass an order affirming the decision of the Treasurer of Prince George's County in these cases.

APPENDIX D

OPINION AND ORDER OF COURT

STATEMENT OF FACTS

These consolidated cases are before this Court on appeal from decisions rendered by the Maryland Tax Court affirming decisions by the County Treasurer which disallowed each appellant's refund claims. Appellants filed their refund claims after the Court of Appeals decision in *White v. Prince George's County,* 275 Md. 314 (1975), wherein the Court held that the County had misconstrued Article 81 §277(q) and had collected recordation taxes at the rate of $1.65 per $500.00, exceeding that authorized by the Legislature of $1.10 per $500.00. As a result, each appellant filed a petition for a partial refund of taxes paid pursuant to the unauthorized tax rate, asserting that *White* mandated that the recordation taxes collected in excess of the rate authorized by the statute were null and void. Accordingly, Rosecroft Trotting and Pacing Association sought to recover $4,477.00; Northampton Corporation sought $11,118.15; the Washington National Arena Limited Partnership sought $19,800.00; Greenbriar Associates sought $3,524.40 and the Cherry Glenn Associates sought $9,644.15.

Subsequent to the filing of a refund petition by each appellant, the Legislature responded to White by enacting Ch. 129 of the Acts of 1976, which ratified the County's prior action relative to the rate at which recordation taxes were collected for the period of 1968 to 1976. Concluding that Ch. 129, rendered moot appellants' claims, the Treasurer for Prince George's County disallowed appellants' refund claims, and they appealed to the Maryland

Tax Court. After considering the written memoranda and oral argument, the Maryland Tax Court affirmed the decision of the County Treasurer, prompting the instant appeals.

At the hearing before this Court relative to the instant appeals, the parties stipulated that there were no factual disputes before this Court in that each petition for partial refund had been timely filed in proper form with the county, and that the appeals from the "final disallowance" by the Treasurer were also timely filed in proper form with the Maryland Tax Court.

The only issues in each case before this Court are whether appellants are legally entitled to a partial refund of the recordation taxes paid pursuant to PGC-CR 32-1968[1] and whether the decisions of the Maryland Tax Court in these appeals were erroneous as a matter of law.

DISCUSSION

Appellants' principal contention on appeal is that the Tax Court erred in holding that Ch. 129 of Acts of 1976 constituted a valid ratification by the Legislature of Prince George's County's action in 1968 concerning the rate at which the recordation taxes were collected. Appellants argue that Ch. 129 was a new, retroactive enactment and not a matter of a ratification of a previously unauthorized action. Therefore, argue appellants, Ch. 129 is unconstitutional since it attempts to tax retroactively transactions which may have occurred as many as eight years before, which, under *Comptroller of Treasurer v. Glenn L. Martin Co.* 216 Md. 235 (1958), is beyond the point in time in

[1]The County Resolution which set the rate at which the recordation taxes were to be collected.

which the Legislature could properly apply retroactive legislation. While appellants present a cogent argument relative to the question of ratification, this Court, having reviewed the authorities cited in the legal memoranda, concludes that the Maryland Tax Court was correct in determining that Ch. 129 of the Acts of 1976 was a valid ratification.

Maryland has recognized the doctrine of ratification and has applied it to tax legislation on a number of occasions. In *National Can Corp. v. State Tax Commission of Maryland,* 220 Md. 418 (1959), the Court of Appeals held that legislation which provided for separate classification of realty and personalty for purposes of taxation was not rendered unconstitutional because the act was made retroactive. Reiterating the rule that a tax is not necessarily invalid because it is retroactive, the Court stated the test to be applied in examining retroactive legislation as follows:

> "[I]f the Legislature possessed the power in the first place to authorize the levy and collection of the taxes in question, then it had the power by retrospective act, to cure any defect which may have obtained in the assessment and collection of such a tax."

Id. at 440, citing *Chicago R.I. & P. Ry. Co. v. Streepy,* 211 Iowa 1334, 236, N.W. 24 (1931).

In *Leonardo v. Board of County Commissioners,* 214 Md. 287 (1959), the Court upheld the power of the Legislature to ratify and confirm the actions taken by the County pursuant to legislative authority of doubtful constitutionality. Citing *O'Brian v. Baltimore County Commissioners,* 51 Md. 15, 24 (1879), the Court stated that " 'if the Legislature possesses the power to authorize one act to be done, it can be retrospective act, cure the evils

which existed because the power thus conferred has been irregularly executed.' " 214 Md. at 302.

Additionally, in *Prince George's County v. Freeman Associates,* 281 Md. 70, 78 (1978), the Court stated that "[a]lthough curative acts may be broadly characterized as being retroactive or retrospective in their operation, they are generally sustained on the theory that whatever a sovereign power may authorize in prospect, it may adopt and validate in retrospect, so long as there is no interference with vested rights or contractual obligations."

After reviewing the legislation in question, this Court has determined that the Legislature properly exercised its powers of ratification in supplying the authority to the County to set the rate of the recordation taxes at the level it did in 1968. While the lapse of time between the unauthorized action taken by the County in 1968 and the Legislature's subsequent ratification in 1976 troubles this Court, appellants have cited no authority which persuades this Court that such a lapse in time would render an act of ratification unlawful. In fact, the Court of Appeals declined to consider such a question in *National Can Corp., supra,* concluding such a determination to be unnecessary to the decision in that case. See 220 Md. at 442. Accordingly, appellants' claims were properly denied since this Court concludes that Ch. 129 was a valid act of ratification by the Legislature.[2]

However, Ch. 129 was not enacted without limitation on its retroactive application. The Legislature included

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[2]However, it is interesting to note that the Legislative almost simultaneously enacted Ch. 142 of the Acts of 1976 which prospectively authorized the county to collect the recordation tax at the rate of $1.65 per $500.00. Such an obvious hedge can only be viewed with a certain degree of skepticism relative to the efficacy of the ratification made by Ch. 129.

two saving clauses in the legislation, exempting from the coverage of the Act any claims which were res judicata or where the legislation would affect a person's vested rights.

Appellants argue that appellee is barred under the doctrine of res judicata from contesting appellants' claims because of the decision in *White I.* They assert that because the County litigated the question of the validity of the rate of the recordation tax in that case, the County is collaterally estopped from raising the effect of Ch. 129 on appellants' refund petitions. Appellants rely on *White v. Prince George's County, Maryland* (opinion filed June 5, 1978) (hereinafter cited as "White II") as authority for their claimed exemption from the sweep of Ch. 129 under the doctrine of res judicata.

In *White II,* the legislative purpose of Ch. 129 as to the exemption of actions which were res judicata at the time of the enactment of Ch. 129 was determined to "exempt from the retroactive section all those recordation tax cases which had been *finally decided* either by the Tax Court or by constitutional courts on review of Tax Court decisions." [Emphasis supplied]. *White II,* slip opinion p. 27. Here, however, appellants' claims had not ever been filed in the Tax Court at the time Ch. 129 was enacted; they had merely been filed with the County Treasurer by the time Ch. 129 was enacted. As such, appellants' claims cannot be construed to fall within the ambit of Ch. 129's exemption of actions which were res judicata at the time of its enactment.

Alternatively, appellants assert that Ch. 129 cannot be employed to defeat their refund claims because such an application would adversely affect their vested rights, i.e., their refund claims. Appellants argue that since they filed their claims for a partial refund after the decision in *White*

I, but prior to the enactment of Ch. 129, they have a vested right to receive that refund and therefore Ch. 129 cannot divest those rights.

However, appellants cite no Maryland decision to support such a contention, and the authority cited is not persuasive. In *National Can Corp., supra,* the Court stated that the fact that appellant had instituted suit prior to the adoption of the curative statute give appellant no vested right which would bar the application of the legislation to its suit. 220 Md. at 418. As such, this Court agrees with the Tax Court that Ch. 129 does not affect any of appellants' vested rights.

Accordingly, since this Court finds that the decisions of the Maryland Tax Court in these appeals were not erroneous as a matter of law, and that appellants are not entitled to a partial refund of the recordation taxes paid pursuant to PG-CR 32-1968, the Judgments of the Maryland Tax Court are hereby affirmed.

/s/ Samuel W.H. Meloy,
Samuel W.H. Meloy, Judge

Copies mailed by the Court to:

Office of Law
5104 County Administration Building
Upper Marlboro, Maryland 20870

Glenn T. Harrell, Jr., Esq.
9827 Central Avenue
Upper Marlboro, Maryland 20870

John J. Sellinger, Esq.
The Aerospace Building
10210 Greenbelt Road
Seabrook, Maryland 20801

/s/
Secretary

9/14/78
Date

APPENDIX E

WASHINGTON NATIONAL ARENA LIMITED PARTNERSHIP ET AL. v. TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND

[No. 124, September Term, 1978.]

Decided February 7, 1980.

TAXATION — CONSTITUTIONAL LAW — *Retroactive Taxes — Statutes Imposing Taxes On Voluntary Transactions, Fully Completed Significantly Before Enactment Of Retroactive Statutes, Unconstitutionally Deprive Taxpayer Of Property Or Contract Rights.* p.45

STATUTES — *Curative Acts — Retroactive Statutes May Not Interfere With Vested Rights Or Contractual Obligations.* pp. 45-56

TAXATION — *Recordation Tax — Statute Retroactively Authorizing Collection Of Increased Recordation Tax Held To Impair Constitutionally Protected Rights — Such Statute Does Not Bar Claims For Refunds Of Excess Recordation Tax — Ch. 129, Acts Of 1976.* By Ch. 129 of the Acts of 1976, the General Assembly purportedly ratified the authority of a county or Baltimore City "to collect recordation taxes pursuant to a tax rate fixed" by resolution or ordinance of a subdivision on or after July 1, 1968, provided that the statute did not apply "whenever constitutionally protected rights would be impaired." By resolution of September, 1968, the Prince George's County Commissioners increased the recordation tax rate from $1.10 (per $500.00 of valuation) to $1.65, which action the Court had held invalid in *Prince George's County v. White,* 275 Md. 314, 340 A.2d 236 (1975).

In the instant case, the Court *held* that Ch. 129 of the Acts of 1976 did not bar timely refund claims for recordation taxes paid prior to 1976 at the $1.65 rate. To apply the act to these fully completed transactions would impair the taxpayers' constitutionally protected rights and would contravene the substantive legislative policy, setting the recordation tax rate at $1.10. In the Court's view, Ch. 129 of the Acts of 1976 was not a "curative act" since it was not designed to cure "technical" or "procedural" defects in the collection of recordation tax. pp. 46-55

J.A.A.

Appeals from the Circuit Court for Prince George's County (MELOY, J.), pursuant to certiorari to the Court of Special Appeals.

Administrative appeals from decisions of the Maryland Tax Court denying claims by taxpayers for partial refunds of recordation taxes paid to Prince George's County. The appeals were consolidated for argument in the Circuit Court for Prince George's County, which affirmed the decisions of the Maryland Tax Court. The claimants then appealed to the Court of Special Appeals. Certiorari was granted prior to consideration by that court.

Judgments of the Circuit Court for Prince George's County reversed, and case remanded to that court for the entry of an order consistent with this opinion. Respondent to pay costs.

The cause was argued before MURPHY, C.J., and SMITH, DIGGES, ELDRIDGE, *ORTH, COLE and DAVIDSON, JJ.

**Reporter's Note:* Orth, J., participated in the hearing of the case and in the conference in regard to its decision but retired prior to the adoption of the opinion by the Court.

John J. Sellinger, with whom were *Fossett & Brugger* on the brief, for Alan I. Kay et al., part of appellants. *Glenn T. Harrell, Jr.,* with whom were *O'Malley, Miles, Farrington & McCarthy* on the brief, for Washington National Arena Limited Partnership et al., other appellants.

David S. Bliden, Associate County Attorney, with whom were *Robert B. Ostrom, County Attorney,* and *Michael O. Connaughton, Deputy County Attorney* on the brief, for appellee.

ELDRIDGE, J., delivered the opinion of the Court.

This case represents the final chapter, we trust, in a long controversy between the government of Prince George's County and certain taxpayers over the proper rate of recordation taxes in Prince George's County. The specific issue before us is whether the retroactive application of a 1976 recordation tax statute would impair constitutionally protected rights.

I.

The dispute had its origins in 1968 when the General Assembly amended Maryland Code (1957, 1975 Repl. Vol.), Art. 81, § 277, relating to the tax imposed upon the recordation of certain written instruments. Subsection (b) of § 277 provided in 1968, and continue to provide, that the basic rate of recordation taxes throughout the State would be $0.55 for each $500.00 of the consideration paid or, in the case of an instrument securing a debt, $0.55 for each $500.00 of the principal amount of the debt secured. The Legislature in 1968 enacted a new subsection (q) of § 277 which in substance stated that the counties and

Baltimore City could, by resolution or ordinance, fix a recordation tax rate in lieu of the basic rate, but that in the absence of such resolution or ordinance, the rate specified in § 277 would continue to apply. Also in 1968, the Legislature added a new subsection (r) to § 277. Subsection (r), applicable only to Prince George's County, provided that "[n]otwithstanding the other provisions of this section," Prince George's County could by resolution adopt, in lieu of the basic recordation tax rate specified in subsection (b), a rate of $1.10 for each $500.00 of consideration or secured debt.

In 1968, soon after subsection (r) was enacted into law, the County Commissioners of Prince George's County by resolution set the recordation tax rate at $1.10. A few months later, however, in September 1968, the Prince George's County Commissioners adopted a new resolution increasing the recordation tax rate to $1.65.

The question of the proper recordation tax rate in Prince George's County first came before us in *Prince George's Co. v. White*, 275 Md. 314, 340 A.2d 236 (1975) (hereinafter referred to as *White I*). The taxpayers in that case had recorded deeds of trust among the Prince George's County land records in 1971 and 1972, and they were required to pay recordation taxes computed at a rate of $1.65 for each $500.00 of debt secured. The taxpayers then filed a claim for a partial refund of the recordation taxes pursuant to Art. 81, §§ 214-217. The Maryland Tax Court, the administrative agency empowered to render a final administrative decision in the matter, held that the legal rate for recordation taxes in Prince George's County was $1.10 for each $500.00 of debt secured and that, therefore, the taxpayers were entitled to a partial refund representing the difference between the taxes actually paid at the $1.65 rate and the amount of taxes which should

have been paid based upon the proper rate of $1.10. This Court in *White I* affirmed the Tax Court, holding that the Legislature intended the $1.10 rate, specified in subsection (r), to be the applicable rate in Prince George's County.

The subject of recordation taxes under Art. 81, § 277, next came before us in *Blumenthal v. Clerk of Cir. Ct.*, 278 Md. 398, 365 A.2d 279 (1976). There this Court held that Baltimore City and certain counties, not including Prince George's County, were authorized by subsection (q) of § 277 to set whatever recordation tax rates those subdivisions deemed appropriate. We pointed out that subsection (r), limiting the rate to $1.10, was applicable just in Prince George's County, and we reiterated our holding in *White I* that the Legislature intended for subsection (r) to take precedence over the general authority granted counties by subsection (q). *Blumenthal v. Clerk of Cir. Ct., supra,* 278 Md. at 407.

The year following this Court's decision in *White I,* two statutes amending Art. 81, § 277, were enacted. Chapter 142 of the Acts of 1976, *inter alia,* amended subsections (q) and (r) to provide that *all* of the counties could by resolution or ordinance fix whatever recordation tax rate they desired, and that, in the absence of such resolution or ordinance, the recordation tax rate in Prince George's County should be $1.65 for each $500.00 of consideration or secured debt. Chapter 142, enacted as an emergency law and taking effect on April 13, 1976, was entirely prospective in its operation.

The other 1976 statute which amended Art. 81, § 277, was Ch., 129 of the Acts of 1976. It is Ch. 129 which gives rise to the retroactivity issue presented in the instant case. Section 1 of Ch. 129 stated the "legislative intent" that, from and after July 1, 1968, the recordation tax rate

prescribed by a county resolution or ordinance superseded the tax rates set forth in *any* subsection of § 277. Section 2, in the first paragraph, purportedly "ratified, confirmed, and validated" the "authority to collect recordation taxes pursuant to a tax rate fixed" by resolution or ordinance of a subdivision on or after July 1, 1968. The second paragraph of § 2 provided that the statute did not apply to "actions which are res judicata, nor whenever constitutionally protected rights would be impaired."[1]

The matter of Prince George's County recordation tax rate, in light of the provisions of Ch. 129 of the Acts of 1976, was before us in *White v. Prince George's County,* 282 Md. 641, 387 A.2d 260 (1978) (hereinafter cited as *White II*). *White II* involved two categories of recordation tax refund claims. One category consisted of claims which had never been presented to the Maryland Tax Court, and we refused to consider the merits of those claims because

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[1]The entire Ch. 129, except for the title and date of enactment clause, is as follows:

> "SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the legislative intent with respect to subsection (q) of Section 277 of Article 81 of the Annotated Code of Maryland is that recordation tax rates fixed from time to time by resolution or ordinance of a county or Baltimore City and which are applicable on or after the date subsection (q) became effective, namely, July 1, 1968, supersede tax rates specified for that political subdivision in any other subsection of Section 277 as of July 1, 1968, or subsequent applicable date of the locally enacted tax rates.
>
> "SECTION 2. AND BE IT FURTHER ENACTED, That authority to collect recordation taxes pursuant to a tax rate fixed from time to time by resolution or ordinance of a county or Baltimore City and applying on or after July 1, 1968, is hereby ratified, confirmed, and validated.
>
> "This Section 2 of the Act is not intended to apply to relevant actions which are res judicata, nor whenever constitutionally protected rights would be impaired."

of the taxpayers' failure to exhaust their administrative remedies. The other category of recordation tax refund claims before us in *White II* consisted of the identical claims involved in *White I,* as to which the taxpayers had, of course, exhausted administrative remedies. In spite of our decision in *White I* that the taxpayers in that case were entitled to refunds, Prince George's County had refused to refund the money. The County initially argued that we should reconsider our prior interpretation of the recordation tax provisions. Alternatively, the County argued that Ch. 129 of the Acts of 1976 had the effect of retroactively increasing the recordation tax rate in Prince George's County to $1.65, so that the $1.65 rate was applicable to the *White I* claims involving 1971 and 1972 taxes. It was the County's contention that the *White I* claims were not excepted from the operation of Ch. 129 by the second paragraph of § 2, because the *White I* litigation was not res judicata and because constitutionally protected rights were not impaired. In *White II,* we rejected both arguments by Prince George's County. First (282 Md. at 657), we refused to depart from the interpretation of Art. 81, § 277 (q) and (r), which we rendered in *White I* and reaffirmed in *Blumenthal v. Clerk of Cir. Ct., supra.* Second (*id.* at 658-659), we held that the *White I* proceedings were res judicata and that, therefore, the *White I* claims were excepted from the operation of Ch. 129. Because of our ruling with regard to res judicata, it was unnecessary for us in *White II* to decide whether constitutionally protected rights would also have been impaired. That issue must now be resolved in the case at bar.

II.

The relevant facts of this case are undisputed and may be briefly stated. The petitioners are several corporations

and partnerships which, at various times prior to 1976, recorded written instruments among the Prince George's County land records and were required to pay recordation taxes based upon the $1.65 rate. They all filed timely claims for partial refunds which, because of the County's failure to act upon them within six months, were disallowed by operation of law.[2]

Petitioners all took timely appeals to the Maryland Tax Court, and, by that time, Ch. 129 of the Acts of 1976 had been enacted into law. The Maryland Tax Court viewed Ch. 129 as "a curative act" which "resurrected the [1968] resolution adopted by the County Commissioners of Prince George's County fixing the recordation tax rate at $1.65 per $500.00." The Tax Court held that, as a "curative act," Ch. 129 could be retroactively applied to petitioners without impairing constitutional rights.

Upon judicial review of the Tax Court's decision, the Circuit Court for Prince George's County affirmed on the ground that Ch. 129 of the Acts of 1976 was "curative" legislation, curing a prior defect in Prince George's County's authority to collect recordation taxes at the rate of $1.65, and, as such, its retroactive application to the taxpayers in this case did not impair constitutionally protected rights. The taxpayers took an appeal to the Court of Special Appeals. Before any further proceedings in that intermediate appellate court, the taxpayers filed a petition for a writ of certiorari which we granted.

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[2]Art. 81, § 217, provides in part that

> "[i]f a claim for refund is neither allowed nor disallowed within 6 months from the date of filing of the claim, the claim may be deemed by the person filing it to have been finally disallowed and such person may file an appeal to the Maryland Tax Court under this section."

III.

The issue in this case could be viewed either as one of statutory interpretations or as a matter of constitutionality. It makes no practical difference whichever way it is viewed. The Legislature, in Ch. 129 of the Acts of 1976, expressly stated its intention that the statute should not apply "whenever constitutionally protected rights would be impaired." Consequently, from a technical viewpoint, if the retroactive application of the 1976 tax statute to the recordation of written instruments at various times between September 1968 and 1976 would impair taxpayers' constitutional rights, then, as a matter of legislative intent, the statute does not apply. However, in order to determine the application of Ch. 129 on this statutory interpretation ground, it is obviously necessary to resolve the constitutional question.

In this Court, Prince George's County defends the constitutionality of applying Ch. 129 of the Acts of 1976 to recordations before 1976 solely on the ground that the Act, as so applied, represents permissible "curative" legislation. The County does not contend, apart from the statute's being "curative," that the Legislature could, consistent with constitutional limitations, in 1976 retroactively increase the tax on recording transactions which were completed as long ago as 1968. Considering the degree of retroactivity and the nature of the transactions here being taxed, we agree that if the application of Ch. 129 to recording transactions between 1968 and 1976 can be sustained, it must be on the ground that the act is valid "curative" legislation.[3]

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[3]Aside from the "curative" theory, the application of a 1976 retrospective tax statute to voluntary transactions fully completed as long ago as 1968, when the applicability of the 1976 statute would not

It is often said that "curative acts," although retroactive, are generally upheld on the ground that whatever a legislative body "may authorize in prospect, it may adopt and validate in retrospect, *so long as there is no interference with vested rights or contractual obligations.*" (Emphasis supplied.) *Co. Council v. Carl M. Freeman Assoc.*, 281 Md. 70, 79, 376 A.2d 860 (1977); *Dryfoos v. Hostetter,* 268 Md. 396, 404, 302 A.2d 28, 32-33 (1973).

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be anticipated, could not be upheld under the federal and state constitutional provisions protecting property rights.

The Supreme Court and this Court have held that retroactive statutes, imposing taxes or other governmental charges and reaching voluntary transactions completed significantly before the enactment of the statutes, unconstitutionally deprive persons of property or contract rights. Coolidge v. Long, 282 U.S. 582, 51 S.Ct. 306, 75 L. Ed. 562 (1931); Untermyer v. Anderson, 276 U.S. 440, 48 S. Ct. 353, 72 L. Ed. 645 (1928); Nichols v. Coolidge, 274 U.S. 531, 47 S. Ct. 710, 71 L. Ed. 1184, 52 A.L.R. 1081 (1927); Forbes Pioneer Boat Line v. Board of Com'rs, 258 U.S. 338, 42 S. Ct. 325, 66 L. Ed. 647 (1922); Comptroller v. Glenn L. Martin Co., 216 Md. 235, 140 A.2d 288, *cert. denied,* 358 U.S. 820, 79 S. Ct. 34, 3 L. Ed.2d 62 (1958). *See* particularly the excellent discussions of the cases by Mr. Justice Stone for the Court in Milliken v. United States, 283 U.S. 15, 51 S. Ct. 324, 75 L. Ed. 809 (1931); by Chief Judge Brune for this Court in Comptroller v. Glenn L. Martin Co., *supra*; and by Judge Parke for this Court in Match Co. v. State Tax Comm., 175 Md. 234, 200 A. 365 (1938).

Generally, cases upholding the constitutionality of retroactive tax legislation have involved relatively short periods of unanticipated retroactivity; they have not involved periods even approaching the eight years in the present case. *See, e.g.,* United States v. Hudson, 299 U.S. 498, 500-501, 57 S.Ct. 309, 81 L. Ed. 370 (1937) (retroactive period of 35 days), and cses there cited. The Supreme Court in Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 83 L. Ed. 87 (1938), suggested that relevant circumstances to be considered in determining the constitutionality of retroactive taxation include the nature of the tax (305 U.S. at 147), whether the tax or tax increase could have been anticipated by the taxpayer at the time of the taxable transaction (*ibid.*), whether the taxable event was "voluntary" so that the taxpayer might have refrained from acting if he had anticipated the tax (*ibid.*), and how far in the past the tax attempted to reach (*id.* at 148).

The problem, frequently, is in determining whether there is an "interference with vested rights or contractual obligations."[4]

With respect to legislation imposing taxes or other governmental charges, which is retroactive to prior years, and which purports to correct defects in the collecting authority for those prior years, the line between permissible "curative" legislation and unconstitutionally retroactive legislation has been somewhat difficult to draw.[5] The two leading Supreme Court cases which illustrate each side of that line are *United States v. Heinszen,* 206 U.S. 370, 27 S. Ct. 742, 51 L. Ed. 1098 (1907), and *Forbes Pioneer Boat Line v. Board of Commissioners,* 258 U.S. 338, 42 S. Ct. 325, 66 L. Ed. 647 (1922).

The facts in *Heinszen* were as follows. In November 1898, after the Philippine Islands came under the military control of the United States, a tariff on goods coming into

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[4]With regard to "vested rights," one commentator has pointed out (Hochman, *The Supreme Court And The Constitutionality Of Retroactive Legislation,* 73 Harv. L. Rev. 692, 696 (1960):

> "The traditional principle invoked in determining the constitutionality of retrospective legislation is that a statute may not abrogate 'vested rights.' However, it has long been recognized that the term 'vested right' is conclusory – a right is vested when it has been so far perfected that it cannot be taken away by statute."

[5]*See, e.g.,* the discussions in Ballard, *Retroactive Federal Taxation,* 48 Harv. L. Rev. 592 (1935); Hochman, *The Supreme Court And The Constitutionality Of Retroactive Legislation, supra,* 73 Harv. L. Rev. at 703-711; Novick and Petersberger, *Retroactivity In Federal Taxation,* 37 Taxes 407, 416-419 (1959); Sekula, *Retroactive Remedial Tax Legislation and the Statute of Limitations,* 9 Duquesne L. Rev. 1, 37-39 (1970); Slawson, *Constitutional and Legislative Considerations in Retroactive Lawmaking,* 48 Cal. L. Rev. 216, 217-221, 238-242 (1960); Note, *Setting Effective Dates For Tax Legislation: A Rule of Prospectivity,* 84 Harv. L. Rev. 436, 440-442 (1970).

the Philippines went into effect pursuant to an order of the President as Commander in Chief. The treaty of peace ending the Spanish-American War was ratified in April 1899, and collections went on under the same tariff. In April 1900, a governing commission was appointed by the President, and the same tariff continued in effect. Then, in March 1902, an Act of Congress continued the original tariff in force. In a series of cases between that time and 1906, dealing with Puerto Rico and the Philippine Islands, the Supreme Court held that the President, as Commander in Chief, had authority to impose the tariff until the treaty of peace was ratified but that, after ratification, the authority had to come from Congress. Consequently, between 1898 and April 1899, when the treaty was ratified, the tariff duties were properly collected, and after March 1902, when Congress acted, they were properly collected. But there was a hiatus in the authority to collect the duties under the tariff between April 1899 and March 1902. Congress responded to this problem in June 1906 by enacting a statute which "legalized and ratified . . . the collection of all such duties" during the gap in authority prior to March 1902.

The issue in *United States v. Heinszen, supra,* was the constitutional validity of the June 1906 statute ratifying the collection of duties under the tariff pursuant to the presidential order. The Court of Claims had refused to give effect to the Act, and the government appealed. The Supreme Court, in an opinion by Mr. Justice White on behalf of a five-judge majority, reversed, applying the principle that a legislative body may

> " 'cure irregularities, and confirm proceedings which without the confirmation would be void, because unauthorized, provided such confirmation does not interfere with intervening rights.' "

> (206 U.S. at 384, quoting from *Mattingly v. District of Columbia,* 97 U.S. 687, 690, 24 L. Ed. 1098 (1878)).

With regard to the argument that the 1906 Act amounted to a retroactive imposition of tariff duties, the majority opinion relied upon the "fact that when the goods were brought into the Philippine Islands there was a tariff in existence under which duties were exacted in the name of the United States." *Id.* at 385. The Court also held that it made no difference that the appellee taxpayers' action for a refund was pending when the "curative act" was enacted, *id.* at 387.

Forbes Pioneer Boat Line v. Board of Com'rs, supra, was decided by the Supreme Court sixteen years after *Heinszen. Forbes* involved the collection of tolls at a canal built and operated by the State of Florida.[6] The Board of Commissioners, being the public agency charged with maintaining the canal as part of the Everglades drainage district, and acting under what it viewed as a broad grant of statutory authority, collected tolls for passage from the Forbes Pioneer Boat Line. The boat line in 1917 filed suit for a refund. The Supreme Court of Florida, based on its interpretation of the statutory provisions (*see* 82 So. at 347-351), held that the Board of Commissioners was not empowered to collect tolls for passage through the canal. On the same day in 1919 as the Florida Supreme Court's decision, the State Legislature passed a statute providing that " 'all tolls heretofore collected . . . [are] legalized and validated.' " (86 So. at 201.)

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[6]In addition to the Supreme Court's opinion, many of the pertinent facts are set forth in Forbes Pioneer Boat Line v. Board of Com'rs, 77 Fla. 742, 82 So. 346 (1919), and Board of Com'rs v. Forbes Pioneer Boat Line, 80 Fla. 252, 86 So. 199 (1920).

The Florida Supreme Court in *Forbes* upheld the validity of the ratification statute, relying on *United States v. Heinszen, supra.* The Supreme Court of the United States, however, in a unanimous opinion written by Mr. Justice Holmes, reversed, holding the statute to be an infringement of constitutionally protected property rights. The Court explained (258 U.S. at 339):

> "Stripped of conciliatory phrases the question is whether a state legislature can take away from a private party a right to recover money that is due when the act is passed. The argument that prevailed below was based on the supposed analogy of *United States v. Heinszen & Co.,* 206 U.S. 370, . . . which held that Congress could ratify the collection of a tax that had been made without authority of law. That analogy, however, fails. A tax may be imposed in respect of past benefits, so that if instead of calling it a ratification Congress had purported to impose the tax for the first time the enactment would have been within its power. *Wagner v. Baltimore,* 239 U.S. 207, 216, 217. *Stockdale v. Atlantic Insurance Co.,* 20 Wall. 323. But generally ratification of an act is not good if attempted at a time when the ratifying authority could not lawfully do the act. *Bird v. Brown,* 4 Exch. 786, 799. If we apply that principle this statute is invalid. For if the Legislature of Florida had attempted to make the plaintiff pay in 1919 for passages through the lock of a canal, that took place before 1917, without any promise of reward, there is nothing in the case as it stands to indicate that it could have done so any more effectively than it could have made a man pay a baker for a gratuitous deposit of rolls."

The Court went on to acknowledge that some of the ratification cases had gone beyond the principles set forth above, but the opinion made it clear that such extension cannot "go very far" in order to be upheld (*id.* 339-340):

> "It is true that the doctrine of ratification has been carried somewhat beyond the point that we indicate, in regard to acts done in the name of the Government by those who assume to represent it. . . . [Citations omitted.] It is true also that when rights are asserted on the ground of some slight technical defect or contrary to some strongly prevailing view of justice, Courts have allowed them to be defeated by subsequent legislation and have used various circumlocutions, some of which are collected in *Danforth v. Groton Water Co.*, 178 Mass. 472, 477. *Dunbar v. Boston & Providence R.R. Co.*, 181 Mass. 383, 385. In those cases it is suggested that the meaning simply is that constitutional principles must leave some play to the joints of the machine.
>
> "But Courts can not go very far against the literal meaning and plain intent of a constitutional text. . . ."

The Supreme Court then pointed out that, in light of the decision of the Florida court below interpreting the Commissioners' statutory authority, the "transaction was not one for which payment naturally could have been expected." (*Id.* at 340.) The Court concluded by stating that because the Legislature omitted to authorize imposition of the tolls earlier constituted no valid basis for later permitting the Legislature to deprive the plaintiff of its right to a refund *(ibid.)*.

There are several points of similarity between *Heinszen* and *Forbes*. In both cases, governmental officials charged

with administering a program collected certain charges believing that they were so authorized. In both there existed some color of authority for the administrative action, *i.e.,* in *Heinszen* the tariff promulgated pursuant to presidential order, and in *Forbes* the statute setting forth the Commissioners' powers, as interpreted by the Commissioners. In both cases there were subsequent court decisions holding that the collections were unauthorized, that the "color of authority" relied upon did not empower the government officials to make the collections, and that the payors were entitled to refunds. Finally, in both cases the appropriate legislative bodies, as a result of the litigation,. enacted retroactive statutes purporting to "legalize" the prior unauthorized collections.

There is, on the other hand, one major area of difference between *Heinszen* and *Forbes.* The unauthorized action of the tax collectors in *Heinszen* did not violate a controlling statute setting forth the applicable policy, whereas in *Forbes,* there were legislative enactments setting forth the authority of the Commissioners which, as interpreted by the courts, the Commissioners were violating. In other words, in *Heinszen* there never was an expression of legislative policy contrary to the unauthorized action of the administrative officials. Instead, the actions of the appropriate policy makers (first the President as Commander in Chief and then the Congress) were entirely consistent with the actions of the Philippine commissioners and the tax collectors. For a reason unrelated to a policy determination concerning the appropriate tariff, there was a hiatus in the authority of the tax collectors. In this sense, *Heinszen* involved the type of defect in authority which is often referred to as a "technical"one. The Commissioners in *Forbes,* however, were, at the time of the toll collections, violating the legislative policy as ascertained by the courts. In *Forbes,* the defect in authority was in no

sense "technical" but related to the legislative policy determination of what, if anything, should be charged by the government. The fact that the Legislature later expressed a different intent, and by "curative act" language attempted to indicate that its new position had been the policy all along, did not convert the change in policy to a ratification of a "technical" defect.

We do not suggest that this distinction between *Heinszen* and *Forbes* can always, like a mathematical formula, determine whether a purported "curative act" should be upheld. Other factors, such as whether the retrospective application of the statute works substantial injustice, whether the retroactive act was anticipated at the time of the transaction, the nature of the "colorable authority" under which the governmental officials were acting, whether the defect in authority at the time of the collections was inadvertent, whether or not the "repairs" made by the ratification statute were "small," etc., all may have a role. *See, e.g.,* the discussions in Hochman, *The Supreme Court And The Constitutionality Of Retroactive Legislation,* 73 Harv. L. Rev. 692, 703-706 (1960); Novick and Petersberger, *Retroactivity In Federal Taxation,* 37 Taxes 407, 416-418 (1959); Slawson, *Constitutional and Legislative Considerations in Retroactive Lawmaking,* 48 Cal. L. Rev. 216, 238-242 (1960). Nevertheless, the line drawn by the *Heinszen* and *Forbes* opinions, taken together, generally represents the limit of a legislature's power to enact "curative" statutes without impairing constitutionally protected rights.

Many other cases reflect the same distinction shown by *Heinszen* and *Forbes,* between ratifying defects in authority unrelated to the underlyilng policy and attempting retroactively to change legislative policy under the guise of "curative acts. " For example, in *Graham v. Goodcell,* 282

U.S. 409, 51 S. Ct. 186, 75 L. Ed. 415 (1931), the Court upheld a retroactive statute rectifying a defect in the authority to collect a tax because of the running of limitations. The Supreme Court there emphasized that the retroactive statute did not affect the amount of the tax which had been due (282 U.S. at 426):

> "The tax was a valid one, and the fact that the taxpayers had been indebted to the Government for the amount which was subsequently collected is not now open to dispute. Delay in collection had followed upon the taxpayers' request for a consideration of their claim that the tax should be abated, and, in the mistaken belief on the part of the administrative authorities that the statute of limitations did not bar collection. . . ."

The Court then discussed *Forbes* and *Heinszen* as the cases illustrating the general principles in this area, and it concluded that removing the bar of limitations was within the doctrine of the *Heinszen* case (*id.* at 427-429). Subsequently, in *Paramino Lumber Co. v. Marshall,* 309 U.S. 370, 378, 60 S. Ct. 600, 84 L.Ed. 814 (1940), a workmen's compensation case, the Court again upheld a retroactive statute curing a limitations problem, pointing out that the act "does not operate to create new obligations where none existed before. It is an act to cure a defect in administration developed in the handling of a compensable claim." *See, e.g., Swayne & Hoyt, Ltd. v. United States,* 300 U.S. 297, 301-302, 57 S. Ct. 478, 81 L. Ed. 659 (1937); *Tiaco v. Forbes,* 228 U.S. 549, 33 S. Ct. 585, 57 L. Ed. 960 (1913); *Sanitary Commission v. Noel,* 155 Md. 427, 142 A. 634, *appeal dismissed,* 278 U.S. 573, 49 S. Ct. 94, 73 L. Ed. 513 (1928) (curing the procedural defect of a lack of notice). *See also Ettor v. Tacoma,* 228 U.S. 148, 33 S. Ct. 428, 57 L. Ed. 773 (1913) (invalidating a retroactive statute which

clearly changed the legislative policy expressed in an earlier statute, as interpreted by the courts).

A Maryland case applying the above-discussed principles, and involving a situation quite similar to that in the instant case, is *Comptroller v. Glenn L. Martin Co.*, 2167 Md. 235, 140 A.2d 288, *cert. denied,* 358 U.S. 820, 79 S. Ct. 34, 3 L. Ed. 2d 62 (1958). In *Martin,* the plaintiff company filed a refund claim for sales and use taxes paid from March 1, 1951, through April 30, 1954. Martin had claimed that under the terms of its contracts with the Navy and Air Force the tangible personal property in dispute — tools and equipment — was to be resold to the United States and therefore did not constitute taxable property within the meaning of the Sales and Use Tax statutes then in force. In two earlier cases, *Baltimore Foundry & Machinery Corp. v. Comptroller,* 211 Md. 316, 127 A.2d 368 (1956), and *Comptroller v. Aerial Products, Inc.*, 210 Md. 627, 124 A.2d 805 (1956), presenting similar facts, this Court had construed the Sales and Use Tax Acts so as to exclude from taxation personal property such as that involved in *Martin.* At the next session of the Legislature after the decisions in *Baltimore Foundry* and *Aerial Products,* Ch. 3 of the Acts of 1957 was enacted as an emergency measure, taking effect on January 28, 1957. That statute, being a direct consequence of the *Aerial Products* and *Baltimore Foundry* decisions, amended the Sales and Use Tax Acts retroactively as of July 1, 1947, to bring about an opposite result and tax personal property of the type involved in those cases. The Act recited that the "uniform administrative interpretation and enforcement by the Comptroller" since 1947 had been in accord with what had "always been the intent of the General Assembly." The statute amended the Sales and Use Tax Acts effective July 1, 1947, so as to cover the property in question.

This Court in *Martin,* relying principally upon *Forbes Pioneer Boat Line v. Board of Com'rs, supra,* held that the retroactive application of Ch. 3 of the Acts of 1957 was in violation of the Fourteenth Amendment and the Maryland Declaration of Rights. After discussing in detail *Heinszen, Forbes* and other "ratification" cases, Chief Judge Brune for the Court stated that if Ch. 3 were treated as an attempted "curative act," then "under the *Forbes Pioneer Boat Line* case the application of the doctrine of ratification would not be supportable." 216 Md. at 249. The Court concluded that the reasoning of Mr. Justice Holmes in *Forbes* was "applicable in the instant case" and that the statute "seeks to place a tax where none was imposed before and to reach transactions completed long before its enactment." *Id.* at 257-258.

Turning to the case at bar, we do not believe that it can be meaningfully distinguished from *Forbes* and *Martin.* Chapter 129 of the Acts of 1976 did not rectify a "technical" defect in the authority of the Prince George's County Commissioners and the tax collectors to collect recordation taxes at the $1.65 rate. Prior to Ch. 129, the maximum recordation tax rate in Prince George's County was $1.10. Article 81, § 277 (r), in clear language, authorized the Prince George's County Commissioners to set the $1.10 rate in lieu of the basic $0.55 rate; it did not authorize a rate of $1.65. This was the legislative policy, as interpreted by this Court in *White I,* in effect at the time the petitioners' taxable transactions were completed, and in effect at the time petitioners filed their claims for refunds. The actions of the officials in Prince George's County, requiring payment at the $1.65 rate, was wholly inconsistent with the policy set forth in the controlling State statute, as construed by this Court. This case, therefore, involves the same type of situation presented in *Forbes* and *Martin.* Unlike *Heinszen* and similar cases upholding "curative

acts," in the present case when the petitioners filed refund claims, they were not entitled to the refunds on the ground of "technical" or procedural defects in the authority of government officials. Instead, like the claimants in *Forbes* and *Martin,* the petitioners were then entitled to refunds because of the legislative policy embodied in Art. 81, § 277 (r), that the tax rate *ought to be* $1.10.

Furthermore, as in *Forbes* and *Martin,* the fact that the Legislature in Ch. 129 couched the language in "curative" terms, and recited (contrary to the language of the prior statute) that its intent had always been the same, does not convert a retroactive policy change into a permissible ratification statute.[7] The presence of "curative" language, or a recital that the Legislature in the past really intended what is now being enacted into law, cannot render a statute immune from constitutional challenge on retroactivity grounds. If it did, any retroactive legislation could be shielded from a successful constitutional attack merely by the insertion of such language.

To give Ch. 129 of the Acts of 1976 the retrospective application urged by Prince George's County would be to hold that a Legislature, after it set one rate of tax upon certain transactions, could then, as long as eight years after the taxable transactions were fully completed under the old rate, reach back and substantially increase that tax on those same transactions. We are aware of no case going so far.[8]

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[7]We have pointed out that a statement by present members of a legislative body, as to what their predecessors intended in a statute enacted several years previously, is not entitled to much weight. Collier v. Connolley, 285 Md. 123, 126, 400 A.2d 1107 (1979).

[8]Prince George's County relies upon National Can Corp. v. Tax Comm., 220 Md. 418, 153 A.2d 287 (1959), *appeal dismissed,* 361 U.S. 534, 80 S. Ct. 586, 4 L. Ed. 2d 538 (1960). *National Can* upheld as permissible "curative" legislation a statute ratifying a certain ad-

Consequently, the retroactive application of Ch. 129 of the Acts of 1976 to the petitioners' recording transactions would impair property rights in violation of the United States Constitution and the Maryland Declaration of Rights. In light of the statement of legislative intent in Ch. 129, that the Act is not to apply "whenever constitutionally protected rights would be impaired," we hold that Ch. 129 presents no bar to the petitioners' refund claims.

Judgment of the Circuit Court for Prince George's County reversed, and case remanded to that court for the entry of an order consistent with this opinion.
Respondent to pay costs.

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ministrative practice by tax assessors with regard to the method of arriving at "full cash value." However, that case does not support Prince George's County's position. What was before the Court in *National Can* was, as just mentioned, a practice regarding the method of assessment; the subjection of property to tax or the level of tax was not directly involved. Moreover, the administrative practice in *National Can* was not specifically dealt with by any prior statute, unlike the administrative action in the instant case which was directly inconsistent with the language of then Art. 81, § 277(r). The present case is obviously closer to *Forbes* and *Martin* than to *National Can*.

APPENDIX F

COURT OF APPEALS
OF MARYLAND
COURTS OF APPEAL BUILDING
ANNAPOLIS, MD. 21401

Joseph L. DiSaia
Chief Deputy

Olive Jane Richards
Virginia Stehle Hubbard
Mary J. Morris
Deputies

269-3341

James H. Norris, Jr.
Clerk

March 10, 1980

David S. Bliden, Esq.
Associate County Attorney
5104 County Administration Building
Upper Marlboro, Maryland 20870

Re: Washington National Arena Limited Partnership et al. v. Treasurer, Prince George's County, Maryland
No. 124 – September Term, 1978

Dear Mr. Bliden:

The Court has considered the motion to reconsider filed in the above entitled case and has denied said motion on March 7, 1980. A copy of the mandate is enclosed.

The record is being returned to the Circuit Court for Prince George's County.

Very truly yours,
/s/ James H. Norris, Jr.
James H. Norris, Jr.
Clerk

JHNjr/h
Encl.
cc: Glenn T. Harrell, Jr., Esq.
John J. Sellinger, Esq.

APPENDIX G

MANDATE

COURT OF APPEALS OF MARYLAND

No. 124, September Term, 1978

Washington National Arena Limited Partnership et al.	Appeals from the Circuit Court for Prince George's County pursuant to certiorari to the Court of Special Appeals.
	Filed: January 3, 1979.
	February 7, 1980: Judgment of the Circuit Court for Prince George's County reversed, and case remanded to that Court for the entry of an order consistent with this opinion. Respondent to pay costs.
v.	
Treasurer, Prince George's County, Maryland	Opinion by Eldridge, J.
	March 6, 1980: Motion to reconsidered filed by appellee.
	March 7, 1980: Above motion denied.

STATEMENT OF COSTS:

In Circuit Court:	No. 1027	No. 1104
Record		
Stenographer's Costs	$50.00	$50.00

In Court of Appeals:

Petition Filing Fee	$ 20.00
Printing Brief for Appellant (Wash. National)	165.46
Portion of Record Extract – Appellant	75.45
Reply Brief	
Appearance Fee – Appellants (2)	20.00
Filing Fee on Appeal (Court of Special Appeals) (2)	60.00
Printing Brief for Appellant (Kay)	218.69
Verbatim Text, etc.	93.75
Printing Brief for Appellee	Not supplied
Portion of Record Extract – Appellee	
Appearance Fee – Appellee	$ 10.00
Motion for reconsideration	10.00

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals this tenth day of March, 1980.

/s/ James H. Norris Jr.
Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

APPENDIX H

CONSTITUTION OF THE UNITED STATES

[Amendment XIV]
Section 1
[Citizenship Rights Not to be Abridged by States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX I

CONSTITUTION OF MARYLAND
DECLARATION OF RIGHTS

Article 24 Due process.

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

APPENDIX J

ANNOTATED CODE OF MARYLAND
ARTICLE 81

§ 217. Same — Appeals.

The person filing a claim for refund shall be entitled to appeal from any final action taken under the provisions of § 216 of this subtitle in disallowing any claim for refund, in whole or in part, to the Maryland Tax Court, and from the action of the Maryland Tax Court may appeal to the courts of this State, in the same manner as appeals are permitted from any other action of the Maryland Tax Court under the provisions of this article. If a claim for refund is neither allowed nor disallowed within 6 months from the date of filing of the claim, the claim may be deemed by the person filing it to have been finally disallowed and such person may file an appeal to the Maryland Tax Court under this section. (An. Code, 1951, § 215; 1941, ch. 701, § 162C; 1943, ch. 123, § 162C; 1959, ch. 757, § 1; 1971, ch. 644, § 1.)

APPENDIX K

ART. 81, ANNOTATED CODE OF MARYLAND

§ 277. Impositions of tax and exemptions; special provisions as to certain counties and Baltimore City.

(a) *Written instruments.* — A tax is hereby imposed upon every instrument of writing conveying title to real or personal property, or creating liens or encumbrances upon real or personal property, offered for record and recorded in this State with the clerks of the circuit courts of the respective counties, or the clerk of the Superior Court of Baltimore City, and on instruments of writing described in subsections (s) and (t) hereof filed with the State Department of Assessments and Taxation, except for liens or encumbrances upon vehicles which are filed and offered for record with the Motor Vehicle Administration, except for liens or encumbrances upon vessels which are filed and offered for record with the Department of Natural Resources, provided that conveyances to the State or any agency thereof or any political subdivision of the State shall not be subject to the tax or charge imposed by this section. The term "instruments of writing" shall include deeds, mortgages, chattel mortgages, bills of sale, leases, deeds of trust, contracts and agreements, and shall also include a filed financing statement under the Uniform Commercial Code used to publicize any of the types of a secured transaction which prior to enactment hereof were subject to the tax hereby imposed but shall not include mechanic's liens, crop liens, or security agreements relating to farm products or equipment used in farming operations, purchase-money mortgages, assignments of mortgages or deeds of trust, conditional sales contracts or other purchase-money security agreements or a security agreement relating to the assignment of contract rights,

accounts, general intangibles or inventory as these terms are defined in the Uniform Commercial Code or a filed financing statement under the Uniform Commercial Code used to publicize any of the same, judgments, releases, orders of satisfaction or a participation agreement showning an interest by a party in a note, mortgage or deed or trust based on a prior recorded loan to the mortgagor or grantor under a deed of trust.

(b) *Instruments conveying title or securing debts.* – (1) In the case of instruments conveying title to property, the tax shall be at the rate of 55 cents for each $500 or fractional part thereof of the actual consideration paid or to be paid; in the case of instruments securing a debt, the tax shall be at the rate of 55 cents for each $500 of the principal amount of the debt secured.

(2) When any property subject to a mortgage or deed of trust is transfered to a spouse, former spouse, son, daughter, or parent of the transferor, the tax is not applicable to the amount of any outstanding mortgage debt assumed by the transferee. When spouses or former spouses transfer property to each other subject to a separation agreement, the tax is applicable only to the extent that value is received or a benefit transferred other than money or evidence of indebtedness.

(3) A statement of the amount of the actual consideration paid or to be paid, if any, including the amount of any mortgage, or deed of trust assumed by the grantee, or the principal amount of the debt secured, and incurred, if any, as applicable, shall either be included in every instrument taxable under this section offered for record as part of its recitals or as part of the acknowledgement, or be contained in a separate affidavit accompanying the instrument, signed under the penalties of perjury by a party to the instrument or the agent of the party.

(d) *Deeds of trust or mortgages conveying property partly within State.* – Upon deeds of trust or mortgages conveying property lying partly within and partly without the State, the tax shall apply only to such proportion of the debt secured as the value of the property within this State bears to the value of the whole property conveyed.

(m) *Allegany, Garrett and Wicomico counties.* – The rate of tax applicable to instruments recorded with the clerk of the circuit court of Allegany, Garrett, and Wicomico counties shall be as follows:

In the case of instruments conveying title to property, the tax shall be at the rate of $1.10 for each $500 or fractional part thereof of the actual consideration paid or to be paid; in the case of instruments securing a debt, the tax shall be paid or to be paid; in the case of instruments securing a debt, the tax shall be at the rate of $1.10 for each $500 of the principal amount of the debt secured.

(n) *Baltimore, Calvert, Dorchester and Worcester counties.* – The rate of tax applicable to instruments recorded with the clerk of the circuit court for Baltimore, Calvert, Dorchester, and Worcester counties shall be as follows:

In the case of instruments conveying title to property, the tax shall be at the rate of $1.65 for each $500 or fractional part thereof of the actual consideration paid or to be paid; in the case of instruments securing a debt, the tax shall be at the rate of $1.65 for each $500 of the principal amount of the debt secured.

(p) *Caroline, Kent and Queen Anne's counties.* – The rate of tax applicable to instruments recorded with the clerk of the circuit court for Caroline, Kent, and Queen Anne's counties shall be as follows:

In the case of instruments conveying title to property, the tax shall be at the rate of $1.10 for each $500.00 or fractional part thereof of the actual consideration paid or

to be paid; and in the case of instruments securing a debt, the tax shall be at the rate of $1.10 for each $500.00 of the principal amount of the debt secured. After May 1, 1968, and additional tax on such instruments shall be imposed at the rate of 55¢ of each $500.00 or fractional part thereof of actual consideration or debt secured.

(q) *Counties and Baltimore City may fix rate of tax.* – In lieu of the rates of tax specified in subsections (b), (m), (n), (o), (p), (r), (u), (v), and (w) of this section, every county and Baltimore City may, by resolution or ordinance duly enacted by its governing body, fix the rate of tax imposed by this subtitle. In the absence (r), (u), (v), tion or ordinance, the provisions of subsections (b), (m), (n), (o), (p), (r), (u), (v), and (w) of this section shall apply in the respective subdivisions to which those subsections are applicable.

(r) *Prince George's County.* – The rate of tax applicable to instruments recorded with the clerk of the Circuit court of Prince George's County shall be as follows: In the case of instruments conveying title to property, the tax shall be at the rate of $1.65 for each $500.00 or fractional part thereof of the actual consideration paid or to be paid; and in the case of instruments securing a debt, the tax shall be at the rate of $1.65 for each $500.00 of the lprincipal amount of the debt secured. The tax imposed shall be paid to and collected by the director of the office of finance of Prince George's County.

(s) *Instruments filed with Department pursuant to Uniform Commercial Code.* – Notwithstanding the other provisions of this section, where an instrument of writing is filed only with the State Department of Assessments and Taxation under § 9-401 (1)(c) of the Commercial Law Article of the Code (The Uniform Commercial Code – Filing), the Department shall collect the tax at the rate of $1.65 for each $500 of the principal amount of the debt secured under the instrument.

The Department shall promptly remit the taxes so collected to the Comptroller of the Treasury. After deducting the cost to the Department of administering this subsection, the Comptroller shall distribute the net proceeds to the counties and Baltimore City in the same ratio as the recordation tax collected by each of the counties and Baltimore City in the next preceding fiscal year bears to the total recordation taxes collected by all of the counties and Baltimore City in that year, all as determined by the Comptroller. The Department of Assessments and Taxation shall have the authority to establish and enforce such reasonable rules and regulations as from time to time it may deem proper to effect the purposes of this subsection.

(t) *All or substantially all of the assets of corporation.* — Notwithstanding the other provisions of this section, on the filing with the State Department of Assessments and Taxation of articles of sale, lease, exchange or other transfer of all or substantially all the property and assets of a corporation under § 3-112 of the Corporations and Associations Article, the Department shall collect the tax at the rate of $1.65 for each $500 of the actual consideration paid or to be paid for any real property or improvements thereto so transferred.

The tax shall not apply to (1) the transfer of title to real property between a subsidiary corporation and its parent corporation for no consideration, for nominal consideration, or in sole consideration of the issue or the cancellation or surrender of a subsidiary stock, or (2) the transfer of title to real property between two or more subsidiary corporations wholly owned by the same parent corporation for no consideration, for nominal consideration, or in sole consideration of the issue or the cancellation or surrender of a subsidiary's stock, or (3) deeds made pursuant to reorganizations within the meaning of § 368 (a) or in accordance with §§ 371 inclusive of the Internal Revenue Code.

The Department shall remit promptly the taxes collected to the Comptroller of the Treasury. After deducting the cost to the Department of administering this subsection, the Comptroller shall distribute the net proceeds to the counties and Baltimore City in the same ratio as the recordation tax collected by each of the counties and Baltimore City in the next preceding fiscal year bears to the total recordation taxes collected by all of the counties and Baltimore City in that year, all as determined by the Comptroller. The Department of Assessments and Taxation may establish and enforce whatever reasonable rules and regulations it deems proper to effect the purposes of this subsection.

(u) *Baltimore City.* — The rate of tax applicable to instruments recorded with the clerk of the Superior Court of Baltimore City and with the clerk of the Circuit Court of Montgomery County shall be as follows:

In the case of instruments conveying title to property, the tax shall be at the rate of $2.20 for each $500 or fractional part thereof of the actual consideration paid or to be paid; in the case of instruments securing a debt, the tax shall be at the rate of $2.20 for each $500 of the principal amount of the debt secured.

(v) *Charles and St. Mary's counties.* — The rate of tax applicable to instruments recorded with the clerk of the circuit court for Charles and St. Mary's counties shall be as follows:

In the case of instruments conveying title to property, the tax shall be at the rate of $3.30 for each $500 or fractional part thereof of the actual consideration paid or to be paid; in the case of instruments securing a debt, the tax shall be at the rate of $3.30 for each $500 of the principal amount of the debt secured.

(w) *Anne Arundel County.* — The rate of tax applicable to instruments recorded with the clerk of the Circuit Court for Anne Arundel County shall be as follows:

In the case of instruments conveying title to property, the tax shall be at the rate of $3.50 for each $500 or fractional part thereof of the actual consideration paid or to be paid; in the case of instruments securing a debt, the tax shall be at the rate of $3.50 for each $500 of the principal amount of the debt secured.

APPENDIX L

LAWS OF MARYLAND
1968

CHAPTER 301
(House Bill 782)

AN ACT to add new Section 277(r) to Article 81 of the Annotated Code of Maryland (1965 Replacement Volume), title "Revenue and Taxes," subtitle "Recordation tax," to follow immediately after Section 277(q) thereof, to raise the recordation tax in Prince George's County and to provide that the tax is to be paid to and collected by the Treasurer of Prince George's County.

SECTION 1. *Be it enacted by the General Assembly of Maryland.* That new Section 277(r) be and it is hereby added to Article 81 of the Annotated Code of Maryland (1965 Replacement Volume), title "Revenue and Taxes," subtitle "Recordation Tax," to follow immediately after Section 277(q) thereof, to read as follows:

277.

(r) Prince George's County. — Notwithstanding the other provisions of this section the County Commissioners of Prince George's County in lieu of the rate of tax provided in subsection (b) above, are authorized by resolution to adopt a rate of tax as follows: In the case of instruments conveying title to property, the tax shall be at the rate of $1.10 for each $500.00 or fractional part thereof of the actual consideration paid or to be paid; and in the case of instruments securing a debt, the tax shall be at the rate of $1.10 for each $500.00 of the principal amount of the debt secured. The tax herein above imposed shall be paid to and collected by the Treasurer of Prince George's County, and paid over by said Treasurer to the County Commissioners.

SEC. 2. *And be it further enacted,* That this Act shall take effect July 1, 1968.

Approved April 10, 1968.

APPENDIX M

LAWS OF MARYLAND
1968

CHAPTER 452
(Senate Bill 209)

AN ACT. . . enabling every subdivision to fix the rate of recordation tax applicable therein. . .

SEC. 5. And be it further enacted. . ., that new Section 277(q) be and it is hereby added to said Article (1965 Replacement Volume) and title, subtitle "Recordation Tax", to follow immediately after Section 277(p) thereof, . . . and . . . to read as follows:

277.

(q) Every county and Baltimore City may, by resolution or ordinance duly enacted by its governing body, fix the rate of tax imposed by this subtitle. In the absence of such resolution or ordinance, the rates specified in this subtitle shall continue to apply. . . .

SEC. 6. And be it further enacted, that the repeal or the repeal and re-enacting with amendments of any tax as provided in this Act shall not affect the liability for nor the enforcement and collection of such tax accrued prior to the effective date of this Act or of the provision so repealing such tax.

SEC. 7. And be it further enacted, that all laws or parts of laws, public general or public local, inconsistent with the provisions of this Act are hereby repealed to the extent of any such inconsistency.

SEC. 8. And be it further enacted, that if any provision of this Act or the application thereof to any person or cir-

cumstance is held invalid for any reason, such invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provision or application, and to this end, all the provisions of this Act are hereby declared to be severable.

SEC. 9. And be it further enacted, that this Act shall take effect July 1, 1968.

Approved May 7, 1968.

APPENDIX N

LAWS OF MARYLAND
1976

CHAPTER 129

(Senate Bill 512)

AN ACT concerning

Recordation Taxes — [[Baltimore City Rates — Mode of Payment]]
Rates and Collection

FOR the purpose of [[providing amended recordation tax rates for Baltimore City; authorizing the City to revise and supersede them by ordinance; providing for collection of the recordation tax by the City; providing for payment of the tax by modes other than stamps]] *clarifying legislative intent regarding recordation tax rates; and ratifying, confirming and validating authority to collect certain recordation taxes;* and making this Act an emergency measure.

[[BY adding to

Article 81 — Revenue and Taxes
Section 277(u)
Annotated Code of Maryland
(1975 Replacement Volume and 1975 Supplement)

BY repealing and reenacting, with amendments,

Article 81 — Revenue and Taxes
Sections 277(n) and 278(a)
Annotated Code of Maryland
(1975 Replacement Volume and 1975 Supplement)

SECTION 1. Be it enacted by the General Assembly of Maryland. That new Section 277(u) be and it is hereby added to Article 81 — Revenue and Taxes, of the Annotated

Code of Maryland (1975 Replacement Volume and 1975 Supplement) to read as follows:

Article 81 — Revenue and Taxes

277.

(u) (1) The rate of tax applicable to instruments recorded with the clerk of the Superior Court of Baltimore City is as follows:

In the case of instruments conveying title to property, the tax shall be at the rate of $2.20 for each $500 or fractional part thereof of the actual consideration paid of to be paid; in the case of instruments securing a debt, the tax shall be at the rate of $2.20 for each $500 of the principal amount of the debt secured.

(2) Baltimore city may, from time to time, fix by ordinance the rate of tax at more or less than that specified in this subsection, and when so fixed the ordinance rate supersedes as of its effective date the rate specified in this subsection.

(3) The tax shall be paid to and collected by the Director of Finance.

SECTION 2. AND BE IT FURTHER ENACTED, that Sections 277(n) and 278(a) of article 81 — Revenue and Taxes, of the Annotated Code of Maryland (1975 Replacement Volume and 1975 Supplement) be and they are hereby repealed and reenacted, with amendments, to read as follows:

Article 81 — Revenue and Taxes

277.

(n) The rate of tax applicable to instruments recorded with the clerk of the [Superior Court of Baltimore City and with the clerk of]the] circuit court for Charles, Calvert, and Worcester counties shall be as follows:

In the case of instruments conveying title to property, the tax shall be at the rate of $1.65 for each $500 or fractional part thereof of the actual consideration paid or to be paid; in the case of instruments securing a debt, the tax shall be at the rate of $1.65 for each $500 of the principal amount of the debt secured.

278.

(a) No instrument subject to the tax imposed by this subtitle, shall be received for record by any clerk of the court unless and until a stamp is affixed to said instrument and cancelled OR PAYMENT OF THE TAX IS OTHERWISE VALIDATED UPON THE INSTRUMENT. The Comptroller shall supply to the clerks of the circuit courts of the respective counties or the clerk of Superior Court of Baltimore City. AND TO OTHER AUTHORIZED COLLECTORS stamps, AS REQUIRED, to evidence the payment of said tax, for sale to persons offering such instruments for record, under such rules and regulations as the Comptroller may prescribe. The proceeds from the sale of said stamps OR OTHER MODE OF PAYING THE TAX, together with the recordation charges herein provided, shall be accounted for and paid over to the county commissioners of the county or the Mayor and City Council of Baltimore in which the tax is collected; provided, however, that (i) in the case of the recordation of instruments conveying title to or creating liens or encumbrances upon real or personal property which is situated in two or more counties or in the City of Baltimore and one or more counties the tax shall be paid in each county or the City of Baltimore according to the applicable rate of tax therein notwithstanding the provisions of § 277 (j) based upon such value as the value of the property situate in the county or city bears to the whole consideration represented by such instrument and the revenue therefrom shall be accounted for and paid to each such county or city. It shall be the duty of any per-

son offering for recordation an instrument conveying title to or creating liens or encumbrances upon real or personal property which is situated in two or more counties or in the city and one or more counties to furnish to the clerk of the court AND OTHER AUTHORIZED COLLECTORS a certification showing the basis for such apportionment of value between or among the several counties or the city: a county transfer tax, for the purposes of this section, shall be apportioned as a recordation tax and (ii) in the case, or creating liens or encumbrances upon real or personal property which is situated in two or more counties or in the City of Baltimore and one or more counties as security for corporate bonds of public utilities the rate shall be that specified in subsection (b) of § 277 and the revenue therefrom shall be accounted for and paid to the Comptroller for the general funds of the State.]]

SECTION 2. AND BE IT FURTHER ENACTED. *That authority to collect recordation taxes pursuant to a tax rate fixed from time to time by resolution or ordinance of a county or Baltimore City and applying on or after July 1, 1968, is hereby ratified, confirmed, and validated.*

This Section 2 of the Act is not intended to apply to relevant actions which are res judicata, nor whenever constitutionally protected rights would be impaired.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety and having been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Asembly, the same shall take effect from the date of its passage.

Approved April 13, 1976.

APPENDIX O

BOARD OF COUNTY COMMISSIONERS
OF
PRINCE GEORGE'S COUNTY

GENERAL PROPOSAL No. 32 – 1968
GENERAL RESOLUTION No. 32 – 11968

AN ORDINANCE to adopt a new rate of recordation tax, as authorized by Chapter 452, Section 5 of the Acts of 1968, Maryland Laws (an act to add new Section 277 (q) to Article 81 of the Annotated Code of Maryland, 1965 Replacement Volume); and to repeal and re-enact with amendments General Resolution No. 21 – 1968, and to amend the prince George's County Code of Ordinances and Resolutions, 1967, Chapter 7, titled "Finance and Taxation," by adding new Section 7 - 6 to Article 1.

SECTION 1. THEREFORE, BE IT RESOLVED by the Board of County Commissioners for prince George's County, Maryland, that General Resolution No. 21 – 1968, is and is hereby repealed and re-enacted with amendments; and that new Section 7 - 6 under the new heading "Rate of Recording Tax" be and it is hereby added to the Prince George's County Code of Ordinances and Resolutions, 1967, to follow immediately after Section 7 - 5, of Article 1, Chapter 7, titled "Finance and Taxation," all to read as follows:

In the case of instruments made pursuant to a bona fide written contract or agreement entered into prior to the effective date of this ordinance, conveying title to property, the tax shall be at the rate of $1.10 for each $500.00, or fractional part thereof, of the actual consideration paid, or to be paid, and in the case of instruments made pursuant to a bona fide written contract or agreement entered

into prior to the effective date of this ordinance, securing a debt, the tax shall be at the rate of $1.10 for each $500.00, or fractional part thereof, of the principal amount of the debt secured; provided, that the Treasurer may require satisfactory proof that the contract or agreement was entered into prior to such date. In the case of all other instruments conveying title to property, the tax shall be at the rate of $1.65 for each $500.00, or fractional part thereof, of the actual consideration paid, or to be paid; and in the case of all other instruments securing a debt, the tax shall be at the rate of $1.65 for each $500.00, or fractional part thereof, of the principal amount of the debt secured.

The taxes imposed shall be paid to and collected by the Treasurer of Prince George's County, and paid over by said Treasurer to the County Commissioners.

SECTION 2. AND BE IT FURTHER RESOLVED that this Resolution shall take effect on the date of its adoption.

Adopted this 13th day of September, 1968.
Passed by the following vote:
Ayes: Commissioners Spellman, Francois, Aluisi, Brooke and Baggett.
Nays: None.
Abstentions: None.

BOARD OF COUNTY COMMISSIONERS FOR
PRINCE GEORGE'S COUNTY, MARYLAND

BY /s/ Gladys Noon Spellman, Chairman

ATTEST:

/S/ Jean M. Schmuhl, Clerk

TRUE COPY ATTEST:

/s/ Jean M. Schmuhl
Clerk of the Council

June 22, 1977
Date

Supreme Court, U. S.
FILED
JUN 11 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1921

TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND,

Petitioner,

v.

WASHINGTON NATIONAL ARENA LIMITED PARTNERSHIP, *et al.*,

Respondents.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

ROBERT BINGHAM OSTROM
County Attorney

MICHAEL OWEN CONNAUGHTON
Deputy County Attorney

DAVID SAMUEL BLIDEN
Associate County Attorney

Attorneys for Petitioner
5104 County Administration Building
Upper Marlboro, Maryland 20870
(301) 952-4347

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

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ARGUMENT

This supplement to the Petition for Certiorari is presented pursuant to Rule 24 and in response to a question raised regarding the timeliness of the Petition. Relying on *Department of Banking, Etc. v. Pink*, 317 U.S. 264 (1942), the Clerk's Office of this Court has suggested that a final judgment arose when the Court of Appeals of

Maryland issued its Opinion.[1] This is not the case as a final judgment of the Court of Appeals of Maryland can only occur when a mandate of that Court has issued.

This conclusion is supported by *Department of Banking, Etc. v. Pink, supra.* In that case, the Petitioner urged that an amendment to the order of the Court of Appeals of New York extended the time in which to apply for certiorari. In rejecting this argument, this Court indicated that a final judgment arises when the record reveals that nothing need ". . . to be done by the lower Court except a ministerial act of entering judgment on the remittitur."[2] *Id.*, at 268. This determination is made by reference to the record and local law. *Richfield Oil Corp. v. State Board of Equalization,* 329 U.S. 69 (1946). In Maryland, the mandate is ". . . the sole formal evidence of the final action of the Court of Appeals." *Klopfer v. Weber,* 264 Md. 419, 421, 286 A.2d 776, 778 (1972), Maryland Rules of Procedure, Rule 876. Prior to its issuance, the lower Court cannot rely on the Opinion which the mandate would render a final judgment. Also, in practice the Court of Appeals of Maryland has on occasion withdrawn and modified its opinion prior to the issuance of its mandate. Thus, unlike the situation in the *Department of Banking* case, the Opinion of the Court of Appeals of Maryland does not provide the lower Court with authority to take

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[1]If this is correct, the Petition was not timely.

[2]Apparently this Court wished to preclude finally a former practice of permitting the time period for filing a petition for certiorari to run from the date the lower court entered judgment in response to the order of the appellate court. *Id.*, at 267. This is not the case at bar as the lower Court has yet to issue any order in response to the mandate of the Court of Appeals of Maryland.

any action. It is only upon the issuance of the mandate that the lower Court can act. That action represents the actual disposition of the case by the Court of Appeals of Maryland. It is its final judgment. Therefore, the Petition is timely.[3]

Respectfully submitted,

ROBERT BINGHHAM OSTROM
County Attorney

MICHAEL OWEN CONNAUGHTON
Deputy County Attorney

DAVID SAMUEL BLIDEN
Associate County Attorney

Attorneys for Petitioner
5104 County Administration Building
Upper Marlboro, Maryland 20870

[3]In cases from other jurisdictions that have appellate court practices similar to Maryland's, this Court has held that the time for filing a petition for certiorari runs from the date the mandate issued or the clerk entered judgment, and not from the earlier date when the opinion or decision issued. *Puget Sound Power and Light Co. v. King County*, 264 U.S. 22, (1924) (appeal from the Supreme Court of the State of Washington); *Commissioner v. Bedford's Estate*, 325 U.S. 283 (1945) (appeal from the United States Circuit Court of Appeals for the Second Circuit.

APPENDIX A

MARYLAND RULES OF PROCEDURE

Rule 876. Mandate.

a. *To Evidence Order of This Court.*

The order of this Court dismissing an appeal or affirming or reversing in whole or in part, or modifying the judgment from which the appeal was taken, or awarding a new trial, or entering a final judgment pursuant to Rule 875 (Final Judgment in This Court) shall be evidenced by the mandate of this Court which shall be certified under the seal of this Court by the Clerk. It shall not be necessary for any formal order or judgment other than the mandate to be signed or transmitted to the lower court.
(Order Dec. 6, 1949 (The Daily Record, 12/8/49).)

b. *When to Be Issued.*

Unless otherwise ordered by this Court, the mandate shall be issued as of course by the clerk upon the expiration of thirty days after the opinion of this Court has been filed or the order or judgment of this Court has been entered, and shall be transmitted by him to the appropriate court.
(Amended June 16, 1975, effective July 1, 1975.)

* * *

d. *Effect of Mandate.*

When the mandate has been transmitted the appropriate court shall proceed according to the tenor and directions thereof.
(Art. 5, § 67; amended June 16, 1975, effective July 1, 1975.)

APPENDIX B

Rule 24. Brief in Opposition – Reply – Supplemental Briefs

* * *

5. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending calling attention to new cases or legislation or other intervening matter not available at the time of his last filing.

* * *

No. 79-1921

Supreme Court, U. S.
FILED
SEP 15 1980
MICHAEL RODAK, JR., CLERK

IN THE
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OCTOBER TERM, 1980

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v.

WASHINGTON NATIONAL ARENA
LIMITED PARTNERSHIP, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

GLENN TRUSSELL HARRELL, JR.
O'MALLEY, MILES,
FARRINGTON & McCARTHY
96 Harry S. Truman Drive
Upper Marlboro, Maryland 20870
(301) 350-1300

Attorney for Respondents, Washington National Arena Limited Partnership, Northampton Corporation and Rosecroft Trotting and Pacing Association, Inc.

and

GEORGE ALBERT BRUGGER
FOSSETT & BRUGGER
10210 Greenbelt Road
Seabrook, Maryland 20801
(301) 794-6900

Attorney for Respondents, Alan I. Kay and Jerome D. Kay, as General Partners of Greenbriar Associates, a Maryland Limited Partnership, and Alan I. Kay and Allen E. Rozansky, as General Partners of Cherry Glenr. Associates, a Maryland Limited Partnership

Washington, D.C. • THIEL PRESS • (202) 638-4521

QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution, *or*, Articles 19 and/or 24 of the Maryland Declaration of Rights prohibit an attempt by State and local government to refuse to refund an admitted illegally collected higher rate of taxation on the recordation of instruments affecting land based on "curative" State legislation enacted in 1976 that purported to validate the illegal tax rate as of 1968.

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RESPONDENT'S APPENDICES:

A. General Resolution No. 21, Board of County Commissioners of Prince George's County, Adopted May 10, 1968 . . . . . 1a

B. Constitution of Maryland, Declaration of Rights, Article 19 . . . . . 2a

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

SUPPLEMENTAL CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent portions of the following, omitted by the Petitioner in its Petition for a Writ of Certiorari and appendices thereto, are printed in Respondent's Appendix:

Constitution of Maryland, Declaration of Rights; Article 19;

General Resolution No. 21 of the Board of County Commissioners of Prince George's County, Maryland, Adopted May 10, 1968.

Petitioner failed to consult with Respondents concerning the content of the appendices annexed to the Petition for a Writ of Certiorari submitted to this Court by the Petitioner.

SUPPLEMENTAL STATEMENT OF THE CASE

Prior to establishing the rate of tax at $1.65 per $500 of consideration or secured debt, Prince George's County, Maryland, in the same year (1968) had set the rate at $1.10 per $500 by adoption of General Resolution No. 21 of the Board of County Commissioners, reproduced herein at p. 1a. It was General Resolution No. 21, and not General Resolution No. 32 (purportedly resetting the rate at $1.65 per $500), which the Court of Appeals of Maryland had found to have been the lawful rate of taxation in *Prince George's County, Maryland v. White*, 275 Md. 314, 340 A.2d 236 (1975).

Footnote numbered 1 of the Petition for a Writ of Certiorari implies that the Court of Appeals of Maryland could only have relied on Article 24 (formerly Article 23 prior to November 7, 1978) of the Maryland Declaration of Rights. Respondents argued below for the application of Article 19 of the Maryland Declaration of Rights, reproduced herein at p. 3a. The Court of Appeals of Maryland, in rendering its decision (A. 24-45), accepted Respondents' arguments as a ground of its opinion that the Petitioner's actions impaired Respondents' property rights "in violation of the United States Constitution and the Maryland Declaration of Rights."

REASONS FOR DENYING A WRIT

The decision of the Maryland Court of Appeals in this matter is supportable as a matter of State law alone, and is not subject to review by the Supreme Court even though the opinion *also* discussed and relied on prior Supreme Court decisions and the Fourteenth Amendment to the United States Constitution. *Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912 (1950). Provisions of the Maryland Declaration of Rights, specifically Articles 19 and 24, were argued in the court below. The Court of Appeals of Maryland justified its holding in the instant case by reference to the Maryland Declaration of Rights as much as by any reference to the Fourteenth Amendment of the Constitution of the United States. Moreover, the only statutes or ordinances construed by the Maryland Court are purely local in origin and impact. The impact of the decision applied only to one County (Prince George's) in Maryland, and then only for the period 1968-1976. Even within the limited time frame involved, the number of taxpayers for which the ruling has significance is finitely limited to those who pursued their administrative remedies in a timely manner specifically as provided for by State and local statute and ordinance. Denying the writ would be in keeping with the Supreme Court's refusal to review a case which is based upon statutes confined in their operation to a political subdivision or which declares the common law of that political subdivision. *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

The decision of the Maryland Court of Appeals is supportable solely on its view that Articles 19 and/or 24 of the Maryland Declaration of Rights create rights vested in Respondents which Petitioner's conduct could not impair. This is true regardless of whether the due process

clause of the Fourteenth Amendment to the United States Constitution was correctly interpreted or applied to the facts of the instant case. If the Maryland Court's view of Maryland constitutional provisions is more expansive than holdings interpreting Federal constitutional provisions, such a position by a state court has recently been sanctioned by the Supreme Court in *Pruneyard Shopping Center v. Robins,* ___ U.S. ___, 100 S. Ct. 2035 (1980). In *Pruneyard* (a freedom of religion and expression case), a California State constitutional provision similar to the U.S. Constitution's First Amendment was interpreted to create a more expansive right than its federal counterpart.

No federal question of substance is presented by this case; only the interpretation of a state statute as applied to a county in that state is involved. No precedential impact outside of Maryland will follow from the decision below. A substantial federal question is not present merely because a federal constitutional issue and decisions of this Court are addressed in the opinion of the State court, or because those issues abstractly considered may present an intellectually interesting or solid problem. *Rice v. Sioux City Memorial Park Cemetery, Inc.,* 349 U.S. 70 (1955).

To the extent that a federal question (due process clause of the Fourteenth Amendment to the U.S. Constitution) was dealt with at all by the Court of Appeals of Maryland, that court's decision was in accord with applicable prior decisions of the Supreme Court. The crux of the case below was the ability of local government to enact retroactive, curative legislation so as to validate an admittedly illegal rate of taxation that had been collected by the County for eight (8) years. The County attempted to use this act as a bar against tax-

payers who had already begun the process triggering refunds to which they were entitled under a prior decision of the Maryland Court of Appeals in *Prince George's County, Maryland v. White,* 275 Md. 314, 340 A.2d 236 (1975), declaring the rate of taxation illegal. The Court of Appeals of Maryland in the instant case interpreted as controlling *Forbes Pioneer Boat Line v. Board of Commissioners,* 258 U.S. 338 (1922), which was in turn applied and construed in Maryland by *Comptroller v. Glenn L. Martin Co.,* 216 Md. 235, 140 A.2d 288 (1957), *cert. denied,* 358 U.S. 820 (1958). *Forbes* has been cited and relied on in recent federal cases. *Simpson v. United States,* 423 F. Supp. 720 (D. Iowa 1976); *de Rodulfa v. United States,* 461 F.2d 1240 (D.C. Cir. 1972); *Block v. District of Columbia,* 492 F.2d 646 (D.C. Cir. 1974).

In *Simpson, supra,* the federal government sought in the year 1966 to tax the increased value of the assets of petitioner's company, a proprietorship electing to be taxed at corporate rates, retroactive to the year 1960 when the election was made. The federal district court, after discussing the relevant decisions of this Court on the issue of retroactive legislation, and particularly *Welch v. Henry,* 305 U.S. 134 (1938), stated:

> The United States Supreme Court thus intimated that there exists a time beyond which a taxing statute may not constitutionally be given retroactive effect. . . . Regulation 1.1361-16(b), requiring at least six years of retroactive taxation in this case and on its face conceivably 10 years in the case of a proprietorship electing under § 1361(a) in 1955, is in violation of the due process clause of the Fifth Amendment and therefore invalid. 423 F. Supp. at 731.

Moreover, in *Graham v. Goodcell,* 282 U.S. 409, 426 (1931), this Court reiterated the general rule announced

in *Forbes* "that it is not consistent with due process to take away from a private party a right to recover the amount that is due when the act is passed." The "curative" statute involved in *Graham* was upheld, but in so holding this Court drew an important distinction which separates the facts of that case from the case at bar.

> It is apparent, as the result of the decisions, that a distinction is made between a bare attempt of the legislature retroactively to create liabilities for transactions which, fully consummated in the past, are deemed to leave no ground for legislative intervention, and the case of a curative statute aptly designed to remedy mistakes and defects in the administration of government where the remedy can be applied without injustice. 282 U.S. at 429.

This Court then cites the case of *Charlotte Harbor & Northern Ry. Co. v. Welles,* 260 U.S. 8 (1922), for the proposition that: "The power is necessary that government may not be defeated by *omissions and inaccuracies* in the exercise of functions necessary to its administration." Emphasis added. 282 U.S. at 430.

Unlike the situations in *Graham* and *Charlotte Harbor,* the statute involved in the present case did not seek to rectify a "technical" defect or an omission or mistake in the authority of Prince George's County to collect recordation taxes at the $1.65 rate. Rather it sought to supply a legislative intent and ability that had been found in 1975 in *Prince George's County, Maryland v. White, supra,* to have been a nullity and void as far back as 1968.

CONCLUSION

The Petition for Writ of Certiorari to the Court of Appeals of Maryland should be denied.

Respectfully submitted,

GLENN TRUSSELL HARRELL, JR.

O'MALLEY, MILES,
FARRINGTON & McCARTHY
96 Harry S. Truman Drive
Upper Marlboro, Maryland 20870
(301) 350-1300

Attorney for Respondents, Washington National Arena Limited Partnership, Northampton Corporation and Rosecroft Trotting and Pacing Association, Inc.

and

GEORGE ALBERT BRUGGER

FOSSETT & BRUGGER
10210 Greenbelt Road
Seabrook, Maryland 20801
(301) 794-6900

Attorney for Respondents, Alan I. Kay and Jerome D. Kay, as General Partners of Greenbriar Associates, a Maryland Limited Partnership, and Alan I. Kay and Allen E. Rozansky, as General Partners of Cherry Glenn Associates, a Maryland Limited Partnership

APPENDIX A

BOARD OF COUNTY COMMISSIONERS
PRINCE GEORGE'S COUNTY

GENERAL PROPOSAL NO. 21–1968

GENERAL RESOLUTION NO. 21–1968

WHEREAS, the County Commissioners of Prince George's County are authorized by Chapter 301 of the Acts of 1968, Maryland Laws, (an act to add new Section 277(r) of Article 81 of the Annotated Code of Maryland, 1965 Replacement Volume) to adopt by resolution a rate of taxes for the recordation of instruments conveying title to property and instruments securing a debt:

SECTION 1. THEREFORE, BE IT RESOLVED, by the Board of County Commissioners for Prince George's County, that the tax imposed by Article 81, 277(a), Annotated Code of Maryland, 1957 Edition (1965 Replacement Volume) on written instruments shall be at the following rates:

In the case of instruments conveying title to property, the tax shall be at the rate of $1.10 for each $500.00, or fractional part thereof, of the actual consideration paid, or to be paid; and in the case of instruments securing a debt, the tax shall be at the rate of $1.10 for each $500.00 of the principal amount of the debt secured.

The tax imposed shall be paid to and collected by the Treasurer of Prince George's County, and paid over by said Treasurer to the County Commissioners.

SECTION 2. *And be it further resolved,* that this Resolution shall take effect July 1, 1968.

Adopted this 10th day of May, 1968.

BOARD OF COUNTY COMMISSIONERS FOR
PRINCE GEORGE'S COUNTY, MARYLAND,

By: _____
Vice-Chairman

ATTEST:

/s/ _____
Jean M. Schmuhl, Clerk

APPENDIX B

CONSTITUTION OF MARYLAND

DECLARATION OF RIGHTS

ARTICLE 19. Remedy for injury to person or property.

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land.